## **EXHIBIT B**

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1
                   UNITED STATES DISTRICT COURT
 2
                  SOUTHERN DISTRICT OF NEW YORK
 3
 4
     JOANNE HART and SANDRA
                                     )
 5
     BUENO, on behalf of
 6
     themselves and all others
 7
     similarly situated,
 8
                      Plaintiffs,
 9
                  VS.
                                    ) No.1:15-CV-04804-WHP
10
     BHH, LLC d/b/a BELL +
11
     HOWELL and VAN HAUSER, LLC,
12
                      Defendants.
13
14
15
                  Videotaped Deposition of DR. PAUL W.
16
     BORTH, called for examination, taken pursuant
     to the Rules of the United States District Courts,
17
18
     pertaining to the taking of depositions, taken before
     Lynn A. McCauley, CSR No. 84-003268, RPR, a Certified
19
20
     Shorthand Reporter of the State of Illinois, at
21
     33 West Monroe Street, Suite 1100, Chicago, Illinois,
22
     on January 16, 2018, at 9:44 a.m.
23
24
25
     Pages 1- 313
                                                      Page 1
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1 PRESENT:	1 Exhibit 11 Lack of Repellency 243 10
2 BURSOR & FISHER, P.A., by	of Three Commercial
MR. YITZCHAK KOPEL AND	2 Ultrasonic Devices
3 MR. ALEC LESLIE	to the German
888 Seventh Avenue	3 Cockroach
4 New York, New York 10019	Exhibit 12 Responses of 251 18
646-837-7127	4 Mosquitoes and
5 ykopel@bursor.com	German Cockroaches
aleslie@bursor.com	5 to Ultrasound
6 Appeared on behalf of Plaintiffs;	Emitted from a
7	6 Random Ultrasonic
and	Generating Device
8	7 Exhibit 13 Defendants' 289 25
9 LEAHY, EISENBERG & FRAENKEL, LTD., by	Disclosure of
MR. ROBERT OSTOJIC AND	8 Retained Experts
0 MR. ADAM H. MC CABE	Exhibit 14 Copy of 293 10
33 West Monroe Street, Suite 1100	9 Bell + Howell
1 Chicago, Illinois 60603	Packaging and
312-368-4554	10 Owner's Manual
2 ro@lefltd.com	11
ahm@lefltd.com	12
3 Appeared on behalf of Defendants.	13
4	14
5 ALSO PRESENT:	15
6 MR. SCOT ZIARKO, Videographer.	16
7	17
8	18
9	19
20	20
21	21
2	22
23	23
24	24
25	25
Page 2	Page
1 INDEX	00
2 WITNESS:	1 THE VIDEOGRAPHER: Good morning. We are now 09
DR. PAUL W. BORTH	2 on the record. 09:41
3 EXAMINATION BY: PG LN	3 My name is Scot Ziarko. I'm the 09:41
4 MR. KOPEL 6 7	y man is beet blance. The the
	4 1 1 1 1 1 1 1
MR. ОЅТОЛС 290 3	4 videographer representing Veritext Legal Solutions. 09:41
	4 videographer representing Veritext Legal Solutions. 09:41 5 Today's date is January 16, 2018. 09:41
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24 A. No. 09:43 24 questions, and I'm going to ask that you please try 09:45	_			
3   50   PALUW BORTH	1	duly sworn.) 09:42	1	A. Many years ago I was involved in a car 09:43
4 called as a winces herein, having been first duly 5 sworn, was examined and testified as follows: 6 EXAMINATION 7 BY MR. KOPEL: 8 Q. Good Morning, Dr. Borth. 0942 9 A. Good morning. 09:42 10 Q. Can you please state your name and 09:42 11 address for the record. 09:42 12 A. Dr. Paul W. Borth. Address, 10255 Fox 09:42 13 Trace, Zionsville, Indiana 46077. 09:42 14 Q. And that's your residential address; 09:42 15 Cornect? 09:42 16 A. Yes. 09:42 17 Q. Can you please state your business 09:42 18 address? 09:42 19 A. Business address is the same, 10255 Fox 09:42 21 Drace, Zionsville, Indiana 46077. 09:43 22 Indiana State of the record, but let 09:43 23 A. Yes. 09:43 24 Q. I know we had met off the record, but let 09:43 25 me please formally introduce myself. 199:43 3 classes in a class action lawsuit against BHII, LLC 09:43 3 classes in a class action lawsuit against BHII, LLC 09:43 5 TIL be asking you some questions 09:43 6 today in connection with that lawsuit. 09:43 7 Do you understand that you have not being 09:43 10 suct, right? 09:43 11 A. Yes. 09:43 12 Q. Okay. Have you ever sat for a 09:43 13 Elack & Decker lawsuit? 09:43 14 A. Yes. 09:43 15 Q. Have you ever testified at tail? 09:43 16 A. Oc. 09:43 17 Q. And was that in connection with the 109:43 18 Black & Decker lawsuit? 09:43 19 Q. And was that in connection with the 109:43 10 Q. Can you please state your business 09:44 11 A. Yes. 09:43 12 Q. Okay. Have you ever sat for a 09:43 13 Time of the record, but let 09:43 14 A. Yes. 09:43 15 Co. Q. Okay. Have you ever sat for a 09:43 16 Lody in connection with that lawsuit. 09:43 17 Q. And was that in connection with the 109:43 18 Black & Decker lawsuit? 09:43 19 Q. Have you ever testified at tail? 09:43 10 Q. Have you ever testified at tail? 09:43 11 A. Yes. 09:43 12 Q. Have you ever testified at tail? 09:43 13 Elack & Decker lawsuit? 09:43 14 A. No. 09:43 15 Lawser, Il-C. 09:43 16 Lawser, Il-C. 09:43 17 Q. And was that in connection with the 09:43 18 Black & Decker lawsuit? 09:43 19 Q. Have you ever testified a	2	THE VIDEOGRAPHER: You may begin. 09:42	2	accident that I was the driver, and somebody sued me 09:43
5 wwm, was examined and testified as follows:  6	3	DR. PAUL W. BORTH	3	for hitting them in the back rear end, 09:44
6   EXAMINATION   7 BY MR. KOPEL:   7 company.   90.44   7 company.   90.44   9 A. Good morning.   90.42   9 A. Good morning.   90.42   10 Q. Chn you please state your name and   90.42   11 Q. Have you ever been convicued of a crime?   90.44   12 A. No.   90.44   13 Trace, Zionsville, Indiana 46077.   90.42   13 Q. Before we continue, I'd like to please   90.44   14 discuss some ground rules for today.   90.44   15 correct?   90.42   16 testifying under cont today?   90.44   17 Q. And thart your residential address;   90.42   18 discuss some ground rules for today.   90.44   18 Q. No.   90.44   19 obligation to tall the truth here today as you would   90.44   19 obligation to tall the truth here today as you would   90.44   19 obligation to tall the truth here today as you would   90.44   10 would want that we communicate   90.44   10 would want that want want want want want want want wa	4	called as a witness herein, having been first duly	4	Q. Okay. And there was your deposition 09:44
7 BY MR. KOPEL:   8 Q. Good Morning, Dr. Borth.   09:42   9 A. Good morning.   09:42   10 Q. Can you please state your name and   09:42   11 address for the record.   09:42   12 A. Dr. Paul W. Borth. Address, 10255 Fox   09:42   13 Trace, Zionaville, Indiana 46077.   09:42   13 Co. Any on please state your residential address;   09:42   14 discuss some ground rules for today.   09:44   15 Cornear?   09:44   16 A. Yes.   09:42   16 A. Yes.   09:42   17 A. Yes.   09:44   17 A. Yes.   09:44   17 A. Yes.   09:44   18 discuss some ground rules for today.   09:44   18 discuss some ground rules for today.   09:44   19 A. Business address is the same, 10255 Fox   09:42   19 A. Business address is the same, 10255 Fox   09:42   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   09:44   19 Obligation to tell the truth here today as you would   19 O	5	sworn, was examined and testified as follows:	5	was not taken in that case? 09:44
8 Q. Good Morning, Dr. Borth. 09:42 9 party? 09:44 9 party? 09:44 10 Q. Can you please state your name and 09:42 11 Q. Have you ever been convicted of a crime? 09:44 11 address for the record. 09:42 12 A. Dr. Paul W. Borth. Address, 10255 Fox 09:42 13 Q. Before we continue, Pd like to please 9:44 14 Q. And that's your residential address; 09:42 15 Vou understand that your residential address; 09:42 16 A. Yes. 09:43 17 A. Yes. 09:43 19 obligation to fell the truth here today as you would 09:44 19 obligation to fe	6	EXAMINATION	6	A. No. It was settled by the insurance 09:44
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11   Q.   Have you ever been convicted of a crime?   09:44	9	A. Good morning. 09:42	9	party? 09:44
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16 A. Yes. 09:42 17 Q. Can you please state your business 09:42 18 address? 18 address? 19 A. Business address is the same, 10255 Fox 09:42 20 Trace, Zionsville, Indiana 46077. 09:43 21 Q. Okay. So you have an office inside your 09:43 22 home? 09:43 23 A. Yes. 09:43 24 Q. I know we had met off the record, but let 09:43 25 me please formally introduce myself. 09:43 26 lawyer. I represent the plaintiffs in the certified 09:43 3 classes in a class action lawsuit against BHH, LLC 09:43 4 and Van Hauser, LLC. 09:43 5 Tilb e asking you some questions 09:43 6 today in connection with that lawsuit. 09:43 6 today in connection with that lawsuit. 09:43 7 Do you understand that you're not being 09:43 10 sueci; right? 09:43 11 A. Yes. 09:43 12 Q. Okay. Have you ever sat for a deposition 09:43 13 before? 09:43 14 A. Yes. 09:43 15 Q. How many times? 09:43 16 testifying under oath today? 09:44 19 obligation to tell the truth here today as you would 09:44 20 if you were testifying in a courtroom before a judge 09:44 21 and a jury? 09:44 22 A. Yes. 09:44 23 Q. It know we had met off the record, but let 09:43 24 clearly today. I'm going to ask you several 09:44 25 questions in connection with this case. 09:44 2 please let me know, and I will try to clarify it for 09:44 3 you. Okay? 09:44 4 A. Yes. 09:43 5 Q. You understand a question, 09:44 4 A. Yes. 09:43 6 here today by counsel who's sitting right next to 09:44 10 sueci; right? 09:43 11 A. Yes. 09:43 12 Q. Do you understand that there is a court 09:44 13 reporter here today. The court reporter is 09:44 14 transcribing everything we say for the record? 09:44 15 A. Yes. 09:43 16 Q. So let's please try to speak at a 09:44 17 reasonable pace to help the court reporter take down 09:45 18 Black & Decker lawsuit? 09:43 19 Will you help me with that? 09:45 20 Q. Other than that, have you ever staffed at trial? 09:43 21 Q. It's difficult for the court reporter if 09:45 22 We talk over each other, so I'm going to try my very 09:45 24 A. No. 09:43 25 best to not interrupt you while you'			l	· · · · · · · · · · · · · · · · · · ·
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21   Q. Okay. So you have an office inside your   09:43   22   A. Yes.   09:44   23   A. Yes.   09:43   24   Q. I know we had met off the record, but let   09:43   25   me please formally introduce myself.   09:43   26   deposition   27   deposition   28   deposition   29   depos	1		1	
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23   A. Yes.   09:43   24   Q. I know we had met off the record, but let   09:43   25   me please formally introduce myself.   09:43   26   27   me please formally introduce myself.   09:43   27   awayer. I represent the plaintiffs in the certified   09:43   28   awayer. I represent the plaintiffs in the certified   09:43   3   classes in a class action lawsuit against BHH, LLC   09:43   4   and Van Hauser, LLC.   09:43   4   and Van Hauser, LLC.   09:43   5   Q. You understand that lawsuit.   09:43   6   bere today in connection with that lawsuit.   09:43   7   Do you understand that?   09:43   7   20   Q. And you understand that you're not being   09:43   10   Sued; right?   09:43   11   A. Yes.   09:43   12   Q. Okay. Have you ever sat for a deposition   09:43   13   transcribing everything we say for the record?   09:44   14   A. Yes.   09:43   15   Q. How many times?   09:43   16   A. One.   09:43   17   Q. And was that in connection with the   09:43   18   Black & Decker lawsuit?   09:43   18   Black & Decker lawsuit?   09:43   19   Will you help me with that?   09:45   19			ŀ	
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25 me please formally introduce myself.				•
Page 6   Page 8   P		•	24	clearly today. I'm going to ask you several 09:44
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3 classes in a class action lawsuit against BHH, LLC 09:43 4 and Van Hauser, LLC. 09:43 4 A. Yes. 09:44 5 I'll be asking you some questions 09:43 5 Q. You understand you're being represented 09:44 6 today in connection with that lawsuit. 09:43 6 here today by counsel who's sitting right next to 09:44 7 you? 09:44 8 A. I do. 09:43 8 A. Yes. 09:44 9 Q. And you understand that you're not being 09:43 10 Do you understand that? 09:43 10 Do you understand that? 09:44 11 A. Yes. 09:43 11 A. Yes. 09:44 12 Q. Okay. Have you ever sat for a deposition 09:43 13 before? 09:43 14 A. Yes. 09:44 15 Q. How many times? 09:43 15 A. Yes. 09:44 16 A. One. 09:43 16 A. One. 09:43 17 reasonable pace to help the court reporter take down 09:45 18 Black & Decker lawsuit? 09:43 18 our words. 09:45 19 A. Yes. 09:43 19 Will you help me with that? 09:45 10 Q. Have you ever testified at trial? 09:43 20 Q. Have you ever testified at trial? 09:43 22 We talk over each other, so I'm going to ask that you please try 09:45 24 questions, and I'm going to ask that you please try 09:45 25 to let me finish my questions before you begin your 09:45 25 to let me finish my questions before you begin your 09:45 25 to let me finish my questions before you begin your 09:45 25 to let me finish my questions before you begin your 09:45 25 to let me finish my questions before you begin your 09:45 26 to let me finish my questions before you begin your 09:45 26 to let me finish my questions before you begin your 09:45 26 to let me finish my questions before you begin your 09:45 27 to let me finish my questions before you begin your 09:45 26 to let me finish my questions before you begin your 09:45 27 to let me finish my questions before you begin your 09:45 26 to let me finish my questions before you begin your 09:45 27 to let me finish my questions before you begin your 09:45 26 to let me finish my questions before you begin your 09:45 27 to let me finish my questions before you begin your 09:45 27 to let me finish my questions before you begin your 09:45 27 to le	1	My name is Yitzchak Kopel. I'm a 09:43	1	If you don't understand a question, 09:44
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A. No. 09:43 22 we talk over each other, so I'm going to try my very 09:45  Q. Have you ever testified at trial? 09:43 23 best to not interrupt you while you're answering my 09:45  A. No. 09:43 24 questions, and I'm going to ask that you please try 09:45  Q. Have you ever been a party to a lawsuit? 09:43 25 to let me finish my questions before you begin your 09:45		•		•
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A. No. 09:43 24 questions, and I'm going to ask that you please try 09:45 25 Q. Have you ever been a party to a lawsuit? 09:43 25 to let me finish my questions before you begin your 09:45	t			
Q. Have you ever been a party to a lawsuit? 09:43 25 to let me finish my questions before you begin your 09:45				- · · · · · · · · · · · · · · · · · · ·
1 7 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1				
Page 7 Page 9	25	- · ·	25	
		Page 7		Page 9

answers. Okay? 09:45	1 Q. Do you have Exhibit 2? 09:47
A. Yes. 09:45	2 A. I do. 09:47
Q. Also, for the benefit of the court 09:45	3 Q. Have you seen it before? 09:47
reporter, please try to answer all of my questions 09:45	4 A. I have. 09:47
verbally, which means you cannot nod your head or say 09:45	5 Q. What is it? 09:47
things like uh-huh because those are impossible for 09:45	6 A. Defendants' Expert Witness Rebuttal to 09:47
the court reporter to transcribe. 09:45	7 Plaintiffs' Expert Report. 09:47
(WHEREUPON, there was a	8 Q. Okay. And this is your rebuttal expert 09:47
brief interruption.)	9 report in this case? 09:47
BY MR. KOPEL:	10 A. It is. 09:47
Q. Did you get that question? 09:45	11 Q. Have you submitted any other expert 09:47
A. I understand the basis of it. Yes, I 09:45	12 testimony in this case so far? 09:47
understand. 09:45	13 A. No. 09:47
Q. Okay. Is there any reason that you 09:45	14 Q. Do these reports contain a complete 09:47
cannot testify truthfully and accurately today? 09:45	15 statement of all opinions you will express and the 09:47
5 A. No. 09:45	16 basis and reasons for them? 09:47
Q. Are you taking any prescription 09:45	17 A. They include what I had at the time that 09:47
medications or other drugs that may affect your 09:45	18 the report was written. Subject to that, I 09:47
ability to think or remember or testify truthfully 09:46	19 understand some of the things have been supplied that 09:47
) today? 09:46	20 were not available when these were written. 09:47
A. No. 09:46	21 Q. Okay. And you've reviewed additional 09:48
MR, KOPEL: I will ask the court reporter to 09:46	22 materials since they were written? 09:48
B please mark as Exhibits Borth 1 and 2 two documents. 09:46	23 A. Yes. 09:48
The first one is titled, 09:46	Q. Have the additional materials that you've 09:48
5 "Defendants' Expert Disclosures." 09:46 Page 10	25 reviewed changed anything changed your opinions on 09:48 Page
The second one is titled, 09:46	1 any matters contained within those reports? 09:48
2 "Defendants' Expert Witness Rebuttal to Plaintiffs' 09:46	2 A. No, they serve to reinforce it. 09:48
3 Expert Report." 09:46	3 Q. What was your assignment in this case? 09:48
(Whereupon, a certain 09:46	4 A. It would be best if I could read the 09:48
document was marked Borth	5 purpose 09:48
6 Exhibit 1 for	6 Q. Go ahead. 09:48
7 identification.) 09:46	7 A of the reason I was retained. 09:48
MR. KOPEL: Can you please hand those to the 09:46	8 So this is included in my 09:48
9 witness. 09:46	9 Defendants' Expert Disclosure. 09:48
09:46 09:46	10 "This document was prepared to 09:48
Q. Dr. Borth, do you have Exhibit 1? 09:46	11 evaluate the research reports that BHH, LLC and 09:48
2 A. I do. 09:46	12 Van Hauser, LLC used to support the entomological 09:48
Q. Have you seen it before? 09:46	13 claims made on and in the packaging and owner's 09:48
4 A. I have. 09:47	14 manual of various of its ultrasonic pest repeller 09:48
5 Q. What is it? 09:47	15 products." 09:49
6 A. Defendants' Expert Disclosure prepared by 09:47	16 That's the basis, the primary 09:49
7 Mr. Paul W. Borth, BCE. 09:47	17 purpose. 09:49
Q. So this is your expert report in this 09:47	18 Q. Okay. Are you providing an opinion as to 09:49
9 case? 09:47	19 the efficacy of the Bell + Howell ultrasonic pest 09:49
0 A. Yes, it is. 09:47	20 repellers in driving out and repelling insects? 09:49
1 (Whereupon, a certain	21 A. Yes. 09:49
2 document was marked Borth	22 Q. Are and can we agree for today I 09:49
3 Exhibit 2 for	23 understand that this isn't completely scientifically 09:49
4 identification.)	24 accurate but can we agree for today that if I say 09:49
4 identification.) 5 BY MR. KOPEL: 09:47	24 accurate — but can we agree for today that if I say 09:49 25 the word insects, I am referring to ants, spiders, 09:49

1 various roles that I held. 09:50 2 Q. Okay. Can you please explain what 09:50 3 opinions you're expressing regarding consumer 09:50 4 preference and marketing? 09:50 5 A. They are contained in the report in 09:50 6 various different ways. 09:50 7 The one that jumps out at me as most 09:51 8 obvious is my opinion on Joanne Hart and Sandra 09:51 9 Bueno's deposition and their use of the devices that 09:51 10 are in question. 09:51 11 And then the other piece in the 09:51 12 report that probably goes to your question is the 09:51 13 section on — that I pulled from Amazon reviews. 09:51 15 wasn't entirely clear on the answer. 09:51 16 Are you an expert in marketing? 09:51 17 A. I have had many jobs within Dow 09:51 18 AgroSciences that — that required that I interact 09:51 19 with marketers and marketing and the development of 09:52 20 Was I ever hired as a marketer, 09:52 21 Was I ever hired as a marketer, 09:52 22 which you could say would be the — in the realm of 09:52 23 an expert, I was never hired as an expert in 09:50 3 Sometimes the essence of those were 09:53 3 Sometimes the essence of those were 09:53 4 written up in trade magazine articles and then 09:55 5 published in a trade magazine would be going to 00 6 circulation of that trade magazine would be going to 00 7 the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences, so I would of the customers of Dow AgroSciences of Dow AgroSciences, so I would of the customers of Dow AgroSciences of Dow Agro	1 :	and roaches please? 09:49	1	A. I supplemented their work as a technical 09:52
3   Q. Do you hold any degrees or certification   09:32	2	A. That's common common nomenclature. 09:49	2	person. 09:52
4 my answer requires that I separate roaches and ants   99:49 5 from spiders, I'll say ao.   99:49 7 Are you providing any opinion as to   99:49 8 the efficiency of Bell + Howell ulteasonic post   99:49 9 the efficiency of Bell + Howell ulteasonic post   99:50 10 A. No.   99:50 11 Q. Are you an expert on rodents?   99:50 12 A. No.   99:50 13 Q. Are you an expert on consumer preference?   99:50 14 MR. OSTOLIC: Object to form, foundation.   99:50 15 But go shead.   99:50 16 BY THE WITNISSS:   99:50 17 A. No.   99:50 18 BY MR. KOPEL:   99:50 20 A. I've not been employed as a marketer.   99:50 21 Q. So ave you delivering any expert opinious   99:50 22 pertaining to the fields of consumer preference or   99:50 23 marketing?   99:52 24 A. Yes, I am, and that goes to my previous   99:50 25 employment under - or with Dow AgroSciences, the   99:50 26 Various different ways.   99:50 3 opinious you're expressing regarding consumer   99:50 3 opinious you're expressing regarding consumer   99:50 4 preference and marketing?   99:50 11 And then the other piece in the   99:51 12 report that probably goes to your question is the   99:51 13 section on - that I pulled from Amazon reviews.   99:51 14 Q. So I know I asked you this before, but I   99:51 15 wasn't entirely clear on the answer.   99:51 16 AR you an expert in marketing   99:52 22 whish you could say would be the -in the realm of   99:52 22 whish you could say would be the -in the realm of   99:52 22 whish you could say would be the -in the realm of   99:52 22 whish you could say would be the -in the realm of   99:52 22 whish you could say would be the -in the realm of   99:52 22 whish you could say would be the -in the realm of   99:52 22 whish you could say would be the -in the realm of   99:52 22 whish you could say would be the -in the realm of   99:52 22 whish you could say would be the -in the realm of   99:53 3 marketing?   99:50 4 in marketing?   99:50 5 A. They or other marketing   99:50 5 A. They or conthain the regiment   99:50 6 various different ways.   99:			3	O. Do you hold any degrees or certification 09:52
5 from spiders, TII say so. 6 Q. Okay. Thank you. 99-49 7 Are you providing any opinion as to 99-49 8 the efficecy of Bell + Howell ultrasonic pest 99-79 8 the efficecy of Bell + Howell ultrasonic pest 99-79 11 Q. Are you an expert on rodeats? 99-50 12 A. No. 99-50 13 Q. Are you an expert on codeats? 99-50 14 MR. OSTOJIC: Object to form, foundation. 15 But go aboud. 99-50 15 BY MR. KOPEL: 99-50 16 BY THE WITNES: 99-50 17 A. No. 99-50 18 BY MR. KOPEL: 99-50 19 Q. Are you an expert on marketing? 99-52 21 Q. So are you delivering any expert opinions 99-50 22 pertaining to the fields of consumer preference or 99-50 23 marketing? 99-52 24 A. Yes, I am, and that goes to my previous 99-50 25 employment under – or with Dow AgnoSciences, the 99-50 3 opinions you're expressing regarding consumer 99-50 5 A. They are contained in the report in 99-50 5 A. They are contained in the report in 99-51 10 are in question. 99-51 11 And then the other piece in the 09-51 12 eport that probably goes to your question is the O9-51 13 section on – that I pulled from Amazon reviews. 99-50 14 Q. So Rown Tasked you this before, but 1 99-51 15 warsuart entirely clear on the answer. 99-51 16 Are you an expert in marketing 99-54 20 pesticides. 99-52 21 Was I even third as a marketer, 99-52 22 which you could say would be the – in the realm of 90-52 22 which you could say would be the – in the realm of 90-52 22 which you could say would be the – in the realm of 90-52 23 marketing the fields of consumer preference of 99-51 24 A. Yes, I am, and that goes to my previous 1 99-50 25 comployment under – or with Dow AgnoSciences, the 99-50 3 opinions you're expressing regarding consumer 99-50 4 preference and marketing? 99-50 7 The one that jumps out at me as most 109-51 16 And then the other piece in the 09-51 17 A. I have had many jobs within Dow 99-51 18 AgnoSciences that – that required that linternet 109-51 19 Wath marketing and their use of the devices that 19-51 19 Wath anacketers and marketing and the development of 109-52 22 which you could			4	
6 Q. Okay. Thank you. 09-49 7 Are you providing any opinion as to 09-49 9 repeller in repelling and driving out redents? 09-50 10 A. No. 09-50 11 Q. Are you an expert on rodents? 09-50 12 A. No. 09-50 13 Q. Are you an expert on consumer preference? 09-50 14 MR. OSTOJIC: Object to form, foundation 09-50 15 But go ahead. 09-50 16 BY THE WITNESS: 09-50 17 A. No. 09-50 18 BY MR. KOPEL: 09-50 19 Q. Are you an expert on marketing? 09-50 20 A. I ven not been employed as a marketer. 09-50 21 Q. So are you delivering any expert opinions 09-50 22 pertaining to the fields of consumer preference or 09-50 23 conclusing in this case? 09-50 24 A. Yes, I am, and that goes to nyo previous 09-50 25 employment under - or with Dow AgroSciences, the 09-50 26 various different ways. 09-50 27 The one that jumps out at me as most 09-51 28 obvious is my opinion on Joanne Hart and Sandra 09-51 29 Repetit the Theolash y goes to your question is the 09-51 20 Repetit the Probably goes to your question is the 09-51 21 Report that probably goes to your question is the 09-51 22 report that probably goes to your question is the 09-51 23 section on - that 1 pulled from anAzzon reviews. 09-51 24 Q. So I know I asked you this before, but I 09-51 25 goes that were contained in the report in 09-50 26 various different ways. 09-50 27 The one that jumps out at me as most 09-51 28 obvious is my opinion on Joanne Hart and Sandra 09-51 29 Bueno's deposition and their use of the devices that 09-51 21 report that probably goes to your question is the 09-51 21 report that probably goes to your question is the 09-51 22 very on a capter in marketing 09-54 23 excitation of that trade magazzine, which would - the 09-55 24 A. Yes, I am, and that the other piece in the 09-51 25 report that probably goes to your question is the 09-51 26 various different ways. 09-50 27 A. The one that jumps out at me as most 09-51 28 obvious is my opinion on Joanne Hart and Sandra 09-51 29 Descricials 09-52 20 A. A yeah 09-52 21 report that probably goes to your question is the 0		m) may a require man a ser e e e e e e e e e e e e e e e e e e		2
8 the efficacy of Bell + Howell ultrasonic pest 69:49 9 repellers in repelling and driving out rodents? 69:50 10 A. No. 69:50 11 Q. Are you an expert on rodents? 709:50 12 A. No. 109:50 13 Q. Are you an expert on consumer preference? 709:50 14 MR. OSTOIC: Object to form, foundation. 709:50 15 But go ahead. 709:50 16 BY THE WITNESS: 709:50 17 A. No. 709:50 18 BY MR. KOPEL: 709:50 18 BY MR. KOPEL: 709:50 19 Q. Are you an expert on marketing? 709:52 20 A. Pve not been employed as a marketer. 709:50 21 Q. So are you delivering any expert opinions 709:50 22 A. Pve not been employed as a marketer. 709:50 23 marketing in this case? 709:50 24 A. Yes, I am, and that goes to my previous 709:50 25 employment under or with Dow AgroSciences, the 709:50 3 opinions you're expressing regarding consumer 709:50 4 preference and marketing? 709:50 5 A. They are contained in the report in 709:50 5 A. They are contained in the report in 709:50 7 The one that jumps out at me as most 709:51 10 are in question. 709:51 11 And then the other piece in the 709:51 12 are in question and their use of the devices that 709:51 13 section on that 1 pulled from Amazon reviews. 709:51 14 A. Pve no that goulet from Amazon reviews. 709:51 15 wasn't entirely clear on the answer. 709:51 16 Are you an expert in marketing? 709:52 21 Q. Okay. Did does Dow distributorships. 709:53 12 report that probably goes to your question is the 709:51 13 section on that 1 pulled from Amazon reviews. 709:51 14 A. I have bad many jobs within Dow 709:51 15 wasn't entirely clear on the answer. 709:50 16 BY THE WITNESS: 709:52 17 A. No. 1 have written expert the marketing 709:50 18 BY MR. KOPEL: 709:50 19 C. Can you please explain what 709:50 20 Q. Okay. Can you please explain what 709:50 21 Q. Okay. Can you please explain what 709:50 22 comployment under or with Dow AgroSciences, 80 please of the devices of t				·
8 the efficacy of Bell + Howell ultrasonic pest   09:49   9 repellers in repelling and driving our rodents?   09:50   11   Q. Are you an expert on rodents?   09:50   12   Q. Have you ever thought any courses in   09:52   13   Q. Are you an expert on rodents?   09:50   14   MR. COSTOJIC: Object to form, foundation.   09:50   15   But go ahead.   09:50   15   But go ahead.   09:50   16   BY THE WITNESS:   09:50   17   Certain pesticides.   09:52   17   A. No.   09:50   18   BY MR. KOPEL:   09:50   17   Certain pesticides.   09:52   18   Q. Can you please explain what you mean by   09:52   19   Q. Are you are expert on marketing?   09:50   18   Marketing?   09:50   19   Marketing?   09:				
9 repellers in repelling and driving out rodents? 09:50 10 A. No. 09:50 11 Q. Are you an expert on rodents? 09:50 12 A. No. 09:50 13 Q. Are you an expert on consumer preference? 09:50 14 MR. OSTOJIC: Object to form, foundation. 09:50 15 Bug oa head. 09:50 16 BY THE WITNESS: 09:50 17 A. No. 09:50 18 BY MR. KOPEL: 09:50 19 Q. Are you an expert on marketing? 09:50 19 Q. Are you an expert on marketing? 09:50 10 By MR. OSTOJIC: Object to form, foundation. 09:50 11 A. No, I have not. 09:52 12 Q. Are you an expert on marketing? 09:50 13 concerning marketing? 09:52 15 pieces that were contained in frade magazine, which 09:52 16 BY THE WITNESS: 09:50 17 A. No. 09:50 18 BY MR. KOPEL: 09:50 19 Q. Are you an expert on marketing? 09:50 20 A. I've not been employed as a marketer. 09:50 22 pertaining to the fields of consumer preference or 09:50 23 marketing in this case? 09:50 24 A. Yes, I am, and that goes to my previous 09:50 25 cmployment under or with Dow AgroSciences, the 09:51 26 various different ways. 09:50 27 The one that jumps out at me as most 09:51 28 obvious is my opition on fooanne Hart and Sandra 09:51 29 Ruends deposition and their use of the devices that 09:51 20 A. They are contained in their report in 09:51 21 Q. So are you delivering any expert opinions 09:50 22 pertaining to the fields of consumer preference or 09:50 23 marketing? 09:50 24 A. Yes, I am, and that goes to my previous 09:50 25 cmployment under or with Dow AgroSciences, the 09:51 26 various different ways. 09:50 27 The one that jumps out at me as most 09:51 28 obvious is my opition on fooanne Hart and Sandra 09:51 29 Ruends deposition and their use of the devices that 09:51 10 are in question. 09:51 11 And then the other piece in the 09:51 12 report that probably goes to your question is the 09:51 13 section on that I palled from Amazon reviews. 09:51 14 Q. Sol Rnow I asked you this before, but I 09:51 15 wanter entirely clear on the answer. 09:52 20 which you could say would be the in the realm of 09:52 21 wilk lay ou could say		,,		
10		1		
11 Q. Are you an expert on rodents? 09:50 12 A. No. 09:50 13 Q. Are you an expert on consumer preference? 09:50 14 MR. OSTOIIC: Object to form, foundation. 09:50 15 But go ahead. 09:50 16 BY THE WITNESS: 09:50 17 A. No. 09:50 18 BY MR. KOPEL: 09:50 19 Q. Are you an expert on marketing? 09:50 19 Q. Are you an expert on marketing? 09:50 21 Q. So are you delivering any expert opinions 09:50 22 pertaining to the fields of consumer preference or 09:50 23 marketing in this case? 09:50 24 A. Yea, I am, and that goes to my previous 09:50 25 employment under — or with Dow AgroSciences, the 09:50 26 A. Yea, I am, and that goes to my previous 09:50 27 marketing in this case? 09:50 28 more with a search of the object o	9		_	
12 A. No. 09:50 13 Q. Are you an expert on consumer preference? 09:50 14 MR. OSTOJIC: Object to form, foundation. 09:50 15 But go ahead. 09:50 16 BY THE WITNESS: 09:50 17 A. No. 09:50 18 BY MR. KOPEL: 09:50 19 Q. Are you an expert on marketing? 09:50 20 A. I've not been employed as a marketer. 09:50 21 Q. So are you delivering any expert opinions 09:50 22 pertaining to the fields of consumer preference or 09:50 23 marketing in this case? 09:50 24 A. Yes, I am, and that goes to my previous 09:50 25 employment under — or with Dow AgroSciences, the 09:50 26 marketing in this case? 09:50 27 marketing in this case? 09:50 28 more you delivering any expert opinions 09:50 29 marketing in this case? 09:50 20 A. Yes, I am, and that goes to my previous 09:50 21 number of the fields of consumer preference or 09:50 22 marketing in this case? 09:50 23 marketing in this case? 09:50 24 A. Yes, I am, and that goes to my previous 09:50 25 employment under — or with Dow AgroSciences, the 09:50 26 mall year and that goes to my previous 09:50 27 marketing in this case? 09:50 28 opinions you're expressing regarding consumer 09:50 29 Q. Okay. Can you please explain what 09:50 30 opinions you're expressing regarding consumer 09:50 40 verious fifterent ways. 09:50 41 preference and marketing? 09:50 42 A. They are contained in the report in 09:50 43 obvious is my opinion on Josanus Hart and Sandra 09:51 44 Q. So 1 know I asked you this before, but 1 09:51 45 products directly to nomprofessional consumers? 09:51 46 Are you an expert in marketing? 09:51 47 A. I have written technical — technical — technical — technical on 90:52 48 A. I am. 109:52 49 A. Yeah. 109:52 40 A. Veal. 109:52 41 A. I have written technical — technical on 90:52 40 A. Yeah. 109:52 41 A. I have not marketing? 09:50 41 A. I have not marketing? 09:50 42 A. Yeah. 109:52 43 A. I am. 109:52 44 A. Yeah. 109:52 45 Both product = the — the roles 09:52 46 A. They are contained in the report in 09:50 47 The one that jumps out at me as most 09:50 48 obvious is my opinion on Jos	10	A. No. 09:50	10	g-
13 Q. Are you an expert on consumer preference? 09:50 14 MR. OSTOIIC: Object to form, foundation. 09:50 15 But go shead. 09:50 16 BY THE WITNESS: 09:50 17 A. No. 09:50 18 BY MR. KOPEL: 09:50 18 BY MR. KOPEL: 09:50 29 Q. Are you an expert on marketing? 09:50 21 Q. So are you delivering any expert opinions 09:50 22 pertaining to the fields of consumer preference or 09:50 23 marketing in this case? 09:50 24 A. Yes, I am, and that goes to my previous 09:50 25 employment under or with Dow AgroSciences, the 09:50 26 Q. Okay. Can you please explain what 09:50 27 pertaining to the fields of consumer preference or 09:50 28 marketing in this case? 09:50 29 Are you are expersing regarding consumer 09:50 20 Q. Okay. Can you please explain what 09:50 21 Q. Are you referring to product instructions 09:52 22 reprefaming to the fields of consumer preference or 09:50 23 marketing in this case? 09:50 24 A. Yes, I am, and that goes to my previous 09:50 25 employment under or with Dow AgroSciences, the 09:50 26 A. They are contained in the report in 09:50 27 pertaining to the fields of consumer preference or 09:50 28 marketing in this case? 09:50 29 pertaining to the fields of consumer preference or 09:50 29 Q. Okay. Can you please explain what 09:50 20 A. Yeah. 09:52 21 Q. Are you referring to product instructions 09:52 22 to specifications? 09:52 23 A. I am. 09:52 24 Both product - the - the roles 09:52 25 that I had in Dow AgroSciences required me over the 09:53 26 A. They are contained in the report in 09:50 27 The one that I pund to a marketer. 09:51 28 about a marketer. 09:50 29 Q. Okay. Can you please explain what 09:50 20 Q. Okay. Can you please explain what you mean by 09:52 21 Q. Are you referring to product instructions 09:52 22 to specifications. 09:52 23 marketing in this case? 09:50 24 La Tom. 100:50 25 that I had in Dow AgroSciences required me over the 09:53 26 that I had in Dow AgroSciences required me over the 09:53 27 the customers of Dow AgroSciences and the output product labels, to 09:51 28 corrections	11	Q. Are you an expert on rodents? 09:50	11	· · · · · · · · · · · · · · · · · · ·
14 MR. OSTOJIC: Object to form, foundation. 09:50 15 But go ahead. 09:50 16 BY THE WITNESS: 09:50 17 A. No. 09:50 18 BY MR. KOPEL: 09:50 19 Q. Are you an expert on marketing? 09:50 20 A. I've not been employed as a marketer. 09:50 21 Q. So are you delivering any expert opinions 09:50 22 pertaining to the fields of consumer preference or 09:50 23 marketing in this case? 09:50 24 A. Yes, I am, and that goes to my previous 09:50 25 employment under – or with Dow AgroSciences, the 09:50 26 pertaining to the fields of consumer preference or 09:50 27 marketing in this case? 09:50 28 marketing in this case? 09:50 29 Employment under – or with Dow AgroSciences, the 09:50 20 A. Yes, I am, and that goes to my previous 09:50 21 various roles that I held. 09:50 22 pertaining volve expressing regarding consumer 09:50 23 opinions you're expressing regarding consumer 09:50 4 preference and marketing? 09:50 5 A. They are contained in the report in 09:50 6 various different ways. 09:50 7 The one that jumps out at me as most 09:51 8 obvious is my opinion on Joanne Hart and Sandra 09:51 10 are in question. 09:51 11 And then the other piece in the 09:51 12 report that probably goes to your question is the 09:51 13 section on – that I palled from Amazon reviews. 09:51 14 Q. So I know I asked you this before, but I 09:51 15 marketing and their use of the devices that 09:51 16 Are you an expert in marketing? 09:51 17 A. I have had many jobs within 00 w 09:51 18 Q. Can you please explain what you mean by 09:52 22 or specifications? 09:52 23 or specifications? 09:52 24 A. Yesh. 09:52 25 that I had in Dow AgroSciences required me over the 09:53 26 that I had in Dow AgroSciences required me over the 09:53 27 the customers of Dow AgroSciences required me over the 09:53 28 consider that marketing. 09:53 29 Q. Who were the customers you're referring 09:53 20 q. A. Tean. 09:52 21 d. A. Tan. 09:52 22 review product labels, and to approve product labels. 00 23 circle that goes band the me oposition of the trade magazine, which would - the 00:5	12	A. No. 09:50	12	Q. Have you ever written any publications 09:52
15 But go ahead. 09:50 16 BY THE WITNESS: 09:50 17 A. No. 09:50 18 BY MR. KOPEL: 09:50 19 Q. Are you an expert on marketing? 09:50 21 Q. So are you delivering any expert opinions 09:50 22 pertaining to the fields of consumer preference or 09:50 23 marketing in this case? 09:50 24 A. Yes, I am, and that goes to my previous 09:50 25 employment under — or with Dow AgroSciences, the 09:50 26 A. They not been exployed as a marketer. 09:50 27 pertaining to the fields of consumer preference or 09:50 28 marketing in this case? 09:50 29 A. Yes, I am, and that goes to my previous 09:50 20 A. Yes, I am, and that goes to my previous 09:50 21 Various roles that I held. 09:50 22 pertaining to the fields of consumer of 09:50 23 A. I am. 09:52 24 A. Yes, I am, and that goes to my previous 09:50 25 employment under — or with Dow AgroSciences, the 09:50 26 A. They are contained in trade magazine, which would one of 09:52 27 pertaining to the fields of consumer preference or 09:50 28 page 14  1 various roles that I held. 09:50 29 Q. Okay, Can you please explain what 09:50 3 opinions you're expressing regarding consumer 09:50 4 preference and marketing? 09:50 5 A. They are contained in the report in 09:50 20 A. Yeah. 09:52 21 Q. Are you referring to product instructions 09:52 22 that I had in Dow AgroSciences required me over the 09:53 4 preference and marketing? 09:50 4 preference and marketing? 09:50 5 A. They are contained in the report in 09:50 5 A. They not been employed as a marketer 09:50 6 various different ways. 09:50 7 The one that jumps out at me as most 09:51 8 obvious is my opinion on Joanne Hart and Sandra 09:51 10 are in question. 09:51 11 And then the other piece in the 09:51 12 report that probably goes to your question is the 09:51 13 section on — that I pulled from Amazon reviews. 09:51 14 Q. So I know I asked you this before, but 1 09:51 15 wasn't entirely clear on the answer. 09:51 16 Are you an expert in marketing? 09:51 17 A. I have had many jobs within Dow 09:51 18 AgroSciences that — that required that I i	13	Q. Are you an expert on consumer preference? 09:50	13	concerning marketing? 09:52
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1 the one word in your question was distributed or 09:54	1 marketed to nonprofessionals were ever written or 09:57
2 distributor. 09:54	2 reviewed by you personally? 09:57
3 In the chain of command not chain 09:54	3 A. I could not give you an example. 09:57
4 of command in the what's that word the 09:54	4 Q. So when it comes to claims written on the 09:57
5 selling chain, Dow AgroSciences was the basic 09:54	5 labeling of Bell + Howell ultrasonic pest repellers, 09:57
6 manufacturer of pesticides products. For the most 09:54	6 would you consider yourself an expert in 09:57
7 part in my employment, I can't remember anything 09:54	7 interpretation of those claims? 09:58
8 otherwise, we would sell the company would sell 09:54	8 A. I would. 09:58
9 those products to a distributor. Those distributors 09:54	9 Q. What's your basis for 09:58
10 would then sell to either another layer in the chain 09:54	10 A. The basis sorry. 09:58
11 or the enduser, whoever that might be. 09:55	11 Q. What's your basis for that? 09:58
12 I cannot maybe I'm not 09:55	12 A. The basis is that I spent many years 09:58
13 remembering your question, but I cannot remember a 09:55	13 writing, reviewing, approving pesticide labels to the 09:58
14 time when Dow AgroSciences sold directly to the 09:55	14 consumer or the customer of Dow AgroSciences. 09:58
15 enduser. 09:55	15 I am very well aware of the 09:58
16 Q. Were were these products that you 09:55	16 technical language that appears on labels. I've 09:58
17 worked on during your course at Dow, were they 09:55	17 written it, I've reviewed it, I've approved them, and 09:58
18 intended for solely for professionals, or did they 09:55	18 since the information on a product label is in my 09:58
19 also include products that were intended to be used 09:55	19 opinion a binding document so to speak, it tells 09:58
20 by nonprofessionals? 09:55	20 the enduser how to use the product. 09:58
21 A. I have to again, I have to clarify. 09:55	21 How I wrote those labels for Dow 09:58
22 There are there are examples 09:55	22 products would also apply for products that were 09:58
23 where Dow would sell the active ingredient to a 09:55	23 distributed or sold by Bell + Howell or Van Hauser. 09:58
24 distributor or formulator who would then formulate it 09:55	Q. Okay. And you hold that opinion even 09:59
25 for use by a consumer. 09:56	25 though you've you can't give me a single example 09:59
Page 18	Page 20
1 So, again, there's a layer in 09:56	1 of any time you've ever written, reviewed, or 09:59
2 between Dow and the enduser. 09:56	2 collaborated on a claim that appeared on a product 09:59
3 Q. So did did Dow have any role in 09:56	3 that was directly purchased by nonprofessional 09:59
4 creating the packaging or labeling of a product that 09:56	4 consumers; correct? 09:59
5 was ultimately viewed by a nonprofessional consumer? 09:56	5 A. I cannot give you a specific example, but 09:59
6 MR. OSTOJIC: Object to form. 09:56	6 I am very confident in my years with Dow that I did 09:59
7 BY THE WITNESS: 09:56	7 so. 09:59
8 A. Yes. 09:56	8 Q. Okay. Is is there any do you think 09:59
9 BY MR. KOPEL: 09:56	9 it's possible that there might be a difference in how 09:59
10 Q. And were you involved in that? 09:56	10 an end consumer might understand something versus how 09:59
11 A. Yes. 09:56	11 a scientist or a professional might understand it? 09:59
12 Q. Can you give me an example? 09:56	12 A. Yes. 09:59
13 A. An example would be chlorpyrifos is the 09:56	13 MR. OSTOJIC: Object to form, foundation. 09:59
14 active ingredient, c-h-l-o-r-p-y-r-i-f-o-s, that's 09:56	14 BY THE WITNESS: 09:59
15 the active ingredient sold under the trade name at 09:56	15 A. Yes. 09:59
16 one time of Dursban, D-u-r-s-b-a-n. Dursban was sold 09:56	16 BY MR. KOPEL: 09:59
17 in big box stores like Lowe's Home and Garden, many, 09:56	17 Q. So when you were writing and reviewing 09:59
18 many other places. 09:57	18 claims, were you were primarily concerned with how 09:59
Now, Dow would have provided the 09:57	19 professionals or scientists would perceive those 09:59
20 basic product information on the label and any claims 09:57	20 claims; correct? 09:59
21 that were made on the product. 09:57	21 A. If the customer was a professional, then, 10:00
22 Whether the distributor or that next 09:57	22 yes. 10:00 23 Q. And you can't give me a single example in 10:00
23 layer added things was beyond the scope of Dow. 09:57	1 43 O. And you can refer the a single example in 10:00
Q. Okay. So do you know for certain whether 09:57	The Court of the C
25 or not any claims that anneared on a nackaging 00.57	24 which the customer was not an example; right? 10:00
25 or not any claims that appeared on a packaging 09:57 Page 19	The Court of the C

Q. Okay. 10:02  A. You'd have to educate me. 10:02  Q. Sure. 10:02  And we just discussed an example. 10:02  Thether or not a consumer is required to read 10:02  Structions and use a product as directed. 10:02  Would you agree that that's 10:02  Mething that would be at least potentially governed 10:02  The applicable law? 10:02  MR. OSTOJIC: Object to form, foundation. 10:02  Y THE WITNESS: 10:02  A. I think yes, I would think so. 10:02
Q. Sure. 10:02  And we just discussed an example. 10:02  Thether or not a consumer is required to read 10:02  structions and use a product as directed. 10:02  Would you agree that that's 10:02  mething that would be at least potentially governed 10:02  the applicable law? 10:02  MR. OSTOJIC: Object to form, foundation. 10:02  Y THE WITNESS: 10:02
And we just discussed an example. 10:02 Thether or not a consumer is required to read 10:02 Structions and use a product as directed. 10:02 Would you agree that that's 10:02 The applicable law? 10:02 MR. OSTOJIC: Object to form, foundation. 10:02 Y THE WITNESS: 10:02
Thether or not a consumer is required to read 10:02 structions and use a product as directed. 10:02 Would you agree that that's 10:02 smething that would be at least potentially governed 10:02 the applicable law? 10:02 MR. OSTOJIC: Object to form, foundation. 10:02 Y THE WITNESS: 10:02
Would you agree that that's 10:02  when thing that would be at least potentially governed 10:02  when the applicable law? 10:02  MR. OSTOJIC: Object to form, foundation. 10:02  Y THE WITNESS: 10:02
Would you agree that that's 10:02 mething that would be at least potentially governed 10:02 the applicable law? 10:02 MR. OSTOJIC: Object to form, foundation. 10:02 Y THE WITNESS: 10:02
mething that would be at least potentially governed 10:02 the applicable law? 10:02 MR. OSTOJIC: Object to form, foundation. 10:02 Y THE WITNESS: 10:02
whe applicable law? 10:02  MR. OSTOJIC: Object to form, foundation. 10:02  Y THE WITNESS: 10:02
MR. OSTOJIC: Object to form, foundation. 10:02 Y THE WITNESS: 10:02
Y THE WITNESS: 10:02
A 1 think ves. I would think so. 10:02
Y MR. KOPEL: 10:02
Q. And you're not you're not qualified to 10:02
nder an opinion on that; correct? 10:02
A. I cannot point to a legal statute that 10:02
ould say so. It makes common sense to me but 10:
Q. Do these reports, Exhibits 1 and 2 in 10:02
ont of you, do they list all facts or data that you 10:02
onsidered in forming your opinions? 10:03
A. At the time that I wrote them, yes. 10:03
Q. Now, I I think that your report 10:03
ferenced six tests that were conducted on the 10:03
ell + Howell ultrasonic pest repeller; correct? 10:03 Page 2-
A. Correct. 10:03
Q. Okay. Were you did you view or 10:03
nsider any other reports conducted on Bell + Howell 10:03
trasonic pest repeller besides for those six? 10:03
A. Yes, I was privy to the reports that were 10:03
pended to Dr. Potter's reports. 10:03
•
Q. Okay. And besides for what was strike 10:03 at.
Q. Okay. And besides for what was strike 10:03
Q. Okay. And besides for what was strike 10:03 at.
Q. Okay. And besides for what was strike 10:03 at. 10:03  Were you privy to those before you 10:03
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03 MR. KOPEL: Yes. 10:03
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03 MR. KOPEL: Yes. 10:03 MR. OSTOJIC: Do you understand the question? 10:03
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03 MR. KOPEL: Yes. 10:03 MR. OSTOJIC: Do you understand the question? 10:03 THE WITNESS: I do. 10:04
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03 MR. KOPEL: Yes. 10:03 MR. OSTOJIC: Do you understand the question? 10:03 THE WITNESS: I do. 10:04 Y THE WITNESS:
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03 MR. KOPEL: Yes. 10:03 MR. OSTOJIC: Do you understand the question? 10:03 THE WITNESS: I do. 10:04 Y THE WITNESS: A. And I was not. 10:04
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03 MR. KOPEL: Yes. 10:03 MR. OSTOJIC: Do you understand the question? 10:03 THE WITNESS: I do. 10:04 Y THE WITNESS: A. And I was not. 10:04 Y MR. KOPEL: 10:04
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03 MR. KOPEL: Yes. 10:03 MR. OSTOJIC: Do you understand the question? 10:03 THE WITNESS: I do. 10:04 Y THE WITNESS: A. And I was not. 10:04 Y MR. KOPEL: 10:04 Q. Okay. Have you spoken with 10:04
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03 MR. KOPEL: Yes. 10:03 MR. OSTOJIC: Do you understand the question? 10:03 THE WITNESS: I do. 10:04 Y THE WITNESS: A. And I was not. 10:04 Y MR. KOPEL: 10:04 Q. Okay. Have you spoken with 10:04 Is. Feuerstein at all? 10:04 A. No. 10:04
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03 MR. KOPEL: Yes. 10:03 MR. OSTOJIC: Do you understand the question? 10:03 THE WITNESS: I do. 10:04 Y THE WITNESS: A. And I was not. 10:04 Y MR. KOPEL: 10:04 Q. Okay. Have you spoken with 10:04 Is. Feuerstein at all? 10:04 A. No. 10:04
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03 MR. KOPEL: Yes. 10:03 MR. OSTOJIC: Do you understand the question? 10:03 THE WITNESS: I do. 10:04 Y THE WITNESS: A. And I was not. 10:04 Y MR. KOPEL: 10:04 Q. Okay. Have you spoken with 10:04 Is. Feuerstein at all? 10:04 A. No. 10:04 Q. Have you spoken with Mr. Mishan? 10:04
Q. Okay. And besides for what was strike 10:03 at. 10:03 Were you privy to those before you 10:03 rote your initial report in this case? 10:03 MR. OSTOJIC: Exhibit 1? 10:03 MR. KOPEL: Yes. 10:03 MR. OSTOJIC: Do you understand the question? 10:03 THE WITNESS: I do. 10:04 Y THE WITNESS: A. And I was not. 10:04 Y MR. KOPEL: 10:04 Q. Okay. Have you spoken with 10:04 Is. Feuerstein at all? 10:04 A. No. 10:04 Q. Have you spoken with Mr. Mishan? 10:04 A. Yes. 10:04
ի 8

1 A. Twice. 10:04	1 A. I did. 10:07
2 Q. How long ago was it? 10:04	Q. Do you have those notes here today? 10:07
3 A. The last was probably approximately 10:04	3 A. They are not here. 10:07
4 I'd say two weeks, two to three weeks ago; and the 10:04	4 Q. Did you speak with anyone else in 10:07
5 time before that might have been six weeks ago. 10:04	5 connection with your work on this case? 10:07
6 Q. What did you discuss? 10:04	6 A. No. 10:07
7 A. The first conversation was about the 10:04	7 Q. Does either have you provided a 10:07
8 agreement, my retention agreement, and some 10:04	8 statement of compensation in either of your expert 10:07
9 particulars with that, and the second was more or 10:05	9 reports in this case? 10:07
10 less a review of the rebuttal report that I had 10:05	10 A. I have not. 10:07
11 submitted. 10:05	Q. In the course of your work in Dow, I know 10:07
12 Q. Did Mr. Mishan make any comments on your 10:05	12 that you you did some work evaluating insecticides 10:0
13 rebuttal report? 10:05	13 or pest is there pesticides? 10:08
14 A. Verbally, yes. 10:05	A. That's a broader term because in typical 10:08
15 Q. What did he say? 10:05	15 parlance that would mean insecticides, herbicides, 10:08
16 A. I can't recall exact, 10:05	16 fungicides. 10:08
17 Q. Did you ultimately make changes as a 10:05	17 Q. Okay. And I assume you did work on 10:08
18 result of his comments? 10:05	18 herbicides an fungicides? 10:08
19 A. My opinions did not change. Some of the 10:05	19 A. I did. 10:08
20 text did. 10:05	Q. Okay. I'm going forward can we agree 10:08
21 Q. Who else did you speak to in connection 10:05	21 I'm not I'm not interested in that work. I'm 10:08
22 with this case? 10:05	22 not that I'm not interested, but for purposes of that 10:08
23 A. Well, the attorneys that are 10:05	23 case, I'm not looking for responses in connection 10:08
24 Mr. Ostojic who is represented here, and then his 10:05	24 with that work unless I specify otherwise, please. 10:08
25 team of of attorneys. 10:05	25 A. I – I can agree with that as long as 10:08
Page 26	Page 28
1 Q. Have you spoken with Dr. Whitford? 10:05	1 you as long as you understand that when I talk 10:09
2 A. Not I have, yeah. 10:06	2 about writing labels, reviewing labels, and approving 10:09
3 Q. When was that? 10:06	3 labels, that could include that does include 10:09
4 A. I believe it was right after his 10:06	4 it's pesticides, which could include all three of 10:09
5 deposition, and that would be the only time. 10:06	5 those subcategories that you mentioned. 10:09
6 Q. Have you e-mailed with him? 10:06	6 Q. Okay. Have you ever worked in evaluating 10:09
7 A. Just recently, yes. 10:06	7 a nonlethal pest repellent during the during your 10:09
8 Q. How long was your conversation after his 10:06	8 time at Dow? 10:09
9 deposition? 10:06	9 A. I would say yes. 10:09
10 A. I'm guessing 10 or 15 minutes. 10:06	10 Q. Can sure. 10:09
11 Q. What did you guys discuss? 10:06	11 Can you elaborate? 10:10
12 A. We primarily we discussed his research 10:06	12 A. Elaborate, yes. 10:10
13 with the transonic unit. 10:06	13 There was at least one instance 10:10
14 Q. What did he say about oh, I'm sorry. 10:06	14 where Dow AgroSciences was working on a repeller 10:10
15 Go ahead. 10:06	15 repellent material for bedbugs. It never made it to 10:10
16 A. And and his deposition. 10:06	16 commercialization. It was not decided by the 10:10
17 Q. What did he say about it? 10:06	17 business team that there was we didn't have the 10:10
18 A. It was just points here and there. I 10:06	18 right infrastructure to sell that so. 10:10
19 mean nothing really there wasn't any action taken 10:07	19 Q. Thanks for that response. 10:10
20 because it was just back and forth comments. 10:07	20 Now, as it pertains to spiders, 10:10
21 Q. Did you you were present by telephone 10:07	21 ants, and roaches, have you ever worked on evaluating 10:10
22 for Dr. Whitford's deposition; correct? 10:07	22 the efficacy of repellent for those insects outside 10:10
23 A. Yes, I was. 10:07	23 of your expert testimony in this case and in the 10:10
24 Q. Did you take notes while you listened to 10:07	24 Black & Decker case? 10:10
25 it? 10:07	25 MR. OSTOJIC: Object to form. 10:10
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1 Go ahead. 10:10	1 to believe they were not. That area of research was 10:13
2 BY THE WITNESS: 10:10	2 just really starting to take off, and methods, 10:14
3 A. No. 10:10	3 protocols were just being established, so now some 20 10:14
4 BY MR. KOPEL: 10:11	4 years later, whatever protocols they used for bedbugs 10:14
5 Q. Are you aware of whether or not Dow 10:11	5 are probably improved, perfected, but we had no 10:14
6 during your time there ever considered manufacturing 10:11	6 reason not to believe they were competent in bedbug 10:14
7 any sort of repellent for ants, spiders, and roaches? 10:11	7 research. 10:14
8 A. I'm not aware of such. 10:11	8 BY MR. KOPEL: 10:14
9 Q. Have now, when you were evaluating 10:11	9 Q. Do you know Bill Donahue? 10:14
10 insecticides at Dow, was Dow conducting its own tests 10:11	10 A. No. 10:14
11 on the insecticides in-house? 10:11	11 Q. Have have you ever had occasion to 10:14
12 A. They were, in combination with other 10:11	12 discuss ultrasonic technology with any of your 10:14
13 entities globally. 10:11	13 colleagues at Dow? 10:14
14 Q. So you was your job to review data 10:11	14 A. Not in a professional setting. 10:14
15 from tests conducted by Dow in addition to data from 10:12	15 Q. Okay. And who did you speak to about it 10:14
16 tests conducted by other laboratories? 10:12	16 outside of the professional setting? 10:14
17 A. In certain of those roles that are in the 10:12	17 A. Yeah, I've been an entomologist in the 10:14
18 CV, yes. 10:12	18 profession for over 30 years, and during the course 10:15
19 Q. Are you familiar with i2L? 10:12	19 of those years when ultrasound repellers were first 10:15
20 A. I am well, I was aware of the company 10:12	20 coming on the market, I'm sure that I had discussions 10:15
21 they evolved from, and I they're in Baltimore, 10:12	21 with people, not in Dow, because well, not in Dow, 10:15
22 Maryland, and I visited their labs for actually 10:12	22 but I cannot remember who those people were. 10:15
23 purposes of Dow contracting them to do some bedbug 10:12	23 Q. Okay. Can you please describe the 10:15
24 work and maybe other things, so but I cannot 10:12	24 contents of your discussions? 10:15
25 remember what the name of the company was before they 10:12	25 MR. OSTOJIC: Object to form, foundation. 10:15
Page 30	Page 32
1 became i2L. 10:12	1 BY THE WITNESS: 10:15
2 Q. I think it might have been ICR. 10:12	2 A. Well, it would primarily be the interest 10:15
3 Does that ring a bell? 10:12	3 in the research, in all the researchers that were 10:15
4 A. Yeah, that sounds correct, yes. 10:12	4 publishing data on ultrasonic repellers. 10:15
5 Q. But it was the same staff; correct? 10:12	5 BY MR. KOPEL: 10:15
6 A. Well, Rob and Todd, the director, moved 10:12	6 Q. Which researchers are you referring to? 10:15
7 on to something else. I don't know whether the 10:12	7 A. More than well, the ones that at 10;15
8 technicians are the same or not. 10:12	8 least the ones that were cited in Dr. Potter's 10:16
9 Q. Okay. Do you know Timothy Ford? 10:13	9 reports. Not all of them. I don't know all of those 10:16
10 A. That's interesting I I think I 10:13	10 people. 10:16
11 might have met him. The name is familiar. I can't 10:13	But Ballard and Gold were the ones 10:16
12 be certain. 10:13	12 that come to mind. 10:16
13 Q. How about Christine Stier? 10:13	13 Q. Dr. Subramanyam? 10:16
14 A. I do not recall that name. 10:13	14 A. Oh, Subramanyam. 10:16
15 Q. Jennifer Hostetler? 10:13	15 Actually, I didn't know until I read 10:16
16 A. I do not recall that name. 10:13	16 this that he was involved in ultrasonic repellers. I 10:16
17 Q. And in the course of your work at Dow, 10:13	17 hadn't seen any of his research. He's an in I 10:16
18 did you rely on test results from that were 10:13	18 know him. He's primarily he his primary 10:16
19 produced by i2L or its predecessor? 10:13	19 expertise or where he where he has spent most of 10:16
E	
20 A. Yes. 10-13	
20 A. Yes. 10:13 21 O. Do you know them to be competent 10:13	20 his research with Dow has been in area of fumigation. 10:16
21 Q. Do you know them to be competent 10:13	20 his research with Dow has been in area of fumigation. 10:16 21 Q. And you you've relied on his research 10:16
21 Q. Do you know them to be competent 10:13 22 scientists? 10:13	20 his research with Dow has been in area of fumigation. 10:16 21 Q. And you you've relied on his research 10:16 22 in the course of your work at Dow? 10:16
21 Q. Do you know them to be competent 10:13 22 scientists? 10:13 23 MR. OSTOJIC: Object to form and foundation. 10:13	20 his research with Dow has been in area of fumigation. 10:16 21 Q. And you you've relied on his research 10:16 22 in the course of your work at Dow? 10:16 23 A. Fumigation work, yes. 10:16
21 Q. Do you know them to be competent 10:13 22 scientists? 10:13 23 MR. OSTOJIC: Object to form and foundation. 10:13 24 BY THE WITNESS: 10:13	20 his research with Dow has been in area of fumigation. 10:16 21 Q. And you you've relied on his research 10:16 22 in the course of your work at Dow? 10:16 23 A. Fumigation work, yes. 10:16 24 Q. How about the names I think you 10:16
21 Q. Do you know them to be competent 10:13 22 scientists? 10:13 23 MR. OSTOJIC: Object to form and foundation. 10:13	20 his research with Dow has been in area of fumigation. 10:16 21 Q. And you you've relied on his research 10:16 22 in the course of your work at Dow? 10:16 23 A. Fumigation work, yes. 10:16

1 A. Yes. 10:16	1 of your work at Dow? 10:19
Q. How about them? Have you relied on their 10:16	2 A. I've had no reason to because there was 10:19
3 work? 10:17	3 no rodent projects going on. 10:19
4 MR, OSTOЛС: Object to form. 10:17	4 Q. Do you know him to be a competent and 10:19
5 BY MR. KOPEL:	5 qualified rodentologist? 10:19
6 Q. In the course of your in the course 10:17	6 A. Only by reputation. 10:19
7 of	7 Q. Now, given that you were aware of let 10:19
8 A. Within Dow? 10:17	8 me take a step back. 10:19
9 Q. Yes. 10:17	9 You mentioned that during your time 10:19
0 A. Not personally, but they have a long 10:17	10 at Dow you likely had discussions with with people 10:19
1 history, and it's likely that prior to my taking the 10:17	11 about ultrasonic technology in a nonprofessional 10:19
2 role a role they would have been done some 10:17	12 setting; correct? 10:19
· · · · · ·	13 A. Yes. 10:19
* * *	14 Q. Okay. Did you consider looking into the 10:19
· · · · · · · · · · · · · · · · · · ·	15 manufacture of devices using this technology in the 10:19
15 BY MR. KOPEL: 10:17	
Q. Do you know each of these individuals to 10:17	
17 be competent entomologists? 10:17	
10:17	18 MR. OSTOJIC: Object to form.   10:20   19 BY MR. KOPEL:   10:20
19 BY THE WITNESS: 10:17	
20 A. I do not know Jim Ballard. I know the 10:17	20 Q. Why not? 10:20
21 name. I've never met him. 10:17	A. It wasn't the core competency of Dow 10:20
Dr. Roger Gold, I have met. He's 10:17	22 AgroSciences to test non-pesticidal products such as 10:20
23 got a distinguished title, has a distinguished chair 10:17	23 ultrasonics at at that time. 10:20
24 at Texas A&M I believe in urban pest management. 10:17	Q. Okay. And so at a later date you did 10:20
25 Just like I indicated for the 10:17 Page 34	25 come to test a device regarding bedbugs; right? 10:20 Page 36
1 Beijing University professor, you would expect that 10:17	1 A. Yes, sir. 10:20
2 somebody rising to that level in the university 10:17	
2 someody fishig to that level in the university 10.17	2 Q. Okay. And what was the distinction 10:20
3 system would be whatever you said competent 10:18	2 Q. Okay. And what was the distinction 10:20 3 between ultrasonic technology and that technology in 10:20
3 system would be whatever you said competent 10:18	3 between ultrasonic technology and that technology in 10:20
3 system would be whatever you said competent 10:18 4 or I can't remember the last part of your 10:18	3 between ultrasonic technology and that technology in 10:20 4 terms of whether or not it was suitable to look into 10:20
3 system would be whatever you said competent 10:18 4 or I can't remember the last part of your 10:18 5 question. 10:18	3 between ultrasonic technology and that technology in 10:20 4 terms of whether or not it was suitable to look into 10:20 5 for production by Dow? 10:20
3 system would be whatever you said competent 10:18 4 or I can't remember the last part of your 10:18 5 question. 10:18 6 BY MR. KOPEL: 10:18	3 between ultrasonic technology and that technology in 10:20 4 terms of whether or not it was suitable to look into 10:20 5 for production by Dow? 10:20 6 A. Well, those decisions it was never my 10:20
3 system would be whatever you said competent 10:18 4 or I can't remember the last part of your 10:18 5 question. 10:18 6 BY MR. KOPEL: 10:18 7 Q. How about Dr. Potter? Had you heard of 10:18	3 between ultrasonic technology and that technology in 10:20 4 terms of whether or not it was suitable to look into 10:20 5 for production by Dow? 10:20 6 A. Well, those decisions it was never my 10:20 7 sole decision to do so or not. It was always a team 10:20
3 system would be whatever you said competent 10:18 4 or I can't remember the last part of your 10:18 5 question. 10:18 6 BY MR. KOPEL: 10:18 7 Q. How about Dr. Potter? Had you heard of 10:18 8 Dr. Potter prior to this lawsuit? 10:18	3 between ultrasonic technology and that technology in 10:20 4 terms of whether or not it was suitable to look into 10:20 5 for production by Dow? 10:20 6 A. Well, those decisions — it was never my 10:20 7 sole decision to do so or not. It was always a team 10:20 8 setting, and in those initial discussions one of the 10:20
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3 system would be whatever you said competent 10:18 4 or I can't remember the last part of your 10:18 5 question. 10:18 6 BY MR. KOPEL: 10:18 7 Q. How about Dr. Potter? Had you heard of 10:18 8 Dr. Potter prior to this lawsuit? 10:18 9 A. Yes, I have. 10:18 10 Q. And have you ever relied on his work in 10:18 11 the course of your work at Dow? 10:18 12 A. Yes, because he was active in testing 10:18 13 urban pest management products, and my the people 10:18 14 that reported to me when I was director of some of 10:18 15 these groups would have gone to Dr. Potter as a 10:18 16 university unbiased university person and 10:18 17 placed asked to place some of our products in his 10:18 18 testing. 10:18 19 Q. Do you know Dr. Potter to be a competent 10:18 20 and qualified entomologist? 10:18 21 A. Yes. 10:18 22 Q. What about Bobby Corrigan? Have you 10:18	3 between ultrasonic technology and that technology in 10:20 4 terms of whether or not it was suitable to look into 10:20 5 for production by Dow? 10:20 6 A. Well, those decisions it was never my 10:20 7 sole decision to do so or not. It was always a team 10:20 8 setting, and in those initial discussions one of the 10:20 9 first things that was in the stepwise process in 10:20 10 Dow's product development was to engage the business 10:21 11 leaders to decide whether there was suitable market 10:21 12 size or not to go into those to even spend money 10:21 13 on the first the first set of researches. 10:21 14 So the difference being again, 10:21 15 ultrasonics was in an era that I was not involved in 10:21 16 this same kind of decisionmaking. 10:21 17 But bedbugs, we perceived it to be a 10:21 18 huge opportunity, a huge market; and somebody, first 10:21 19 one in, usually makes the most money. 10:21 20 Q. You are not an expert in the physics of 10:21 21 ultrasonic technology; correct? 10:21 22 A. Correct. 10:22

1 Q. Can you can you please take a look at 10:22	1 So if I'm in an agricultural field 10:26
2 Pages 18 and 19 of Exhibit 2, and let me know when 10:22	2 and I control aphids in a soybean field, I have 10:26
3 you're there. 10:22	3 reduced the number of aphids in that soybean field 10:2
4 A. This would be of my rebuttal report; 10:23	4 below a level which would cause the farmer harm, 10
5 right? 10:23	5 monetary damage. It's called economic threshold. 10:
6 Q. Correct. 10:23	6 Similarly, if you're in an urban 10:26
7 A. Yes, I'm there. 10:23	7 environment 10:26
8 Q. Okay. Do you see there's a section 10:23	8 Q. What does that mean? Like inside of a 10:26
9 titled, "Inherent Bias Throughout the Potter Report"? 10:23	9 residence? 10:26
10 A. I do. 10:23	10 A. Yes. 10:26
11 Q. Okay. Now, here it it looks like 10:23	11 Q. Okay. Thanks. 10:26
12 you take issue with two with two things Dr. Potter 10:23	12 A. If a pesticide reduces the number of 10:26
13 did, which was use of the words/phrase control and 10:23	13 cockroaches, let's say, below a level that is 10:26
14 out of buildings; correct? 10:23	14 concerning to the customer, then there is there by 10:20
15 A. Yes. 10:23	15 control. That's what I mean by control. 10:26
	16 Q. Can you please explain why you thought it 10:2'
	And the state of t
17 explain these to me one at a time. 10:23  18 What what does the word control 10:23	17 was inappropriate for Dr. Potter to use that term in 10:27
	Page 10 and 10 a
19 mean, and why is it inappropriate in this context? 10:23	19 A. Yes, I sure can. 10:27
20 MR. OSTOJIC: Object to form, foundation. 10:23	20 Q. Go ahead. 10:27
21 Why don't you read that section and 10:23	A. The word control is not used in any of 10:27
22 then go ahead and 10:23	22 the product literature that Bell + Howell produced. 10:2
23 THE WITNESS: Yeah. 10:24	Q. Have you seen evidence that the 10:27
MR. KOPEL: Just let me know whenever you're 10:24	24 Bell + Howell ultrasonic pest repellers are capable 10:2
25 ready. 10:24 Page 38	25 of reaching the level of pest control in an urban 10:27 Page 4
1 THE WITNESS: All right. I'm ready. 10:25	1 environment? 10:27
2 MR. KOPEL: Okay. Do you remember the 10:2	5 2 MR. OSTOJIC: Object to form, foundation. 10:27
3 question I asked? 10:25	3 Go ahead. 10:27
4 THE WITNESS: No, I would like to have it 10:25	4 BY THE WITNESS: 10:27
5 repeated. 10:25	5 A. I'm sorry. I'm thinking through all 10:27
6 BY MR. KOPEL: 10:25	6 the 10:27
7 Q. Sure. 10:25	7 MR. KOPEL: Do you need me to rephrase the 10:27
8 Can you please define what you were 10:25	8 question? 10:27
9 referring to when you speak of pest control here and 10:25	22
10 explain why you think it is inappropriate in this 10:25	10 rephrase, yeah. 10:28
11 context? 10:25	11 MR. KOPEL: Yeah, no problem. No problem. 10:28
12 A. I'll start with the second part of your 10:25	12 BY MR. KOPEL:
13 question. Why is it did you say appropriate or 10:25	13 Q. So let me try to take a step back. 10:28
14 inappropriate? 10:25	14 You've now defined what pest what 10:28
15 Q. I think to set a foundation so we all 10:25	The second secon
	15 you believe pest control means in the context of a 10:28
	5 16 residence; correct? 10:28
17 the question. 10:25	17 A. Yes. 10:28
18 A. Okay. 10:25	18 Q. Have you seen evidence that the 10:28
19 Q. Can you please explain what you mean by 10:25	
20 pest control in this context, what that means? 10:25	20 of pest control inside of a residence? 10:28
A. Control to me means rid the pest of - 10:25	21 A. I've seen evidence of control in the 10:28
22 no, let me back up. 10:25	22 laboratory setting that in these six, five-five 10:28
For the customer that's using it 10:25	23 studies that were mentioned earlier. 10:28
24 control would mean that you have eliminated the 10:25	24 I would add that in from the 10:28
25 concern from the environment. 10:26	25 depositions of Joanne Hart and Sandra Bueno that 10:28
Page 39	Page 4

1 there was a level of control exhibited there in those 10:28	1 Go ahead. 10:30
2 residences. 10:28	2 BY THE WITNESS: 10:30
3 Q. Okay. And and as a matter of science, 10:28	3 A. I guess I cannot ask you questions, 10:30
4 do you think it's appropriate to rely on the 10:29	4 but 10:30
5 experience of two individuals to reach a scientific 10:29	5 MR. KOPEL: You can ask for a clarification. 10:30
6 conclusion? 10:29	6 BY THE WITNESS: 10:31
7 MR. OSTOJIC: Object to form, foundation. 10:29	7 A. Clarify reliable for me. 10:31
8 BY MR. KOPEL: 10:29	8 BY MR. KOPEL: 10:31
9 Q. Maybe I need to maybe I need to 10:29	9 Q. Well, you just said that you I 10:31
1   1985   1986   198	10 believe what you just said I was using the word 10:31
	11 reliable based on what you said, and what I 10:31
Do you believe it's appropriate to 10:29	
12 rely on anecdotal accounts of two consumers of making 10:29	12 believe you said was that anecdotal evidence may be 10:31
13 a determination if something is effective? 10:29	13 considered as part of a whole package, but by itself 10:31
A. Isn't the basis of this lawsuit, those 10:29	14 it's not really reliable, so I was using reliable in 10:31
15 two consumers? 10:29	15 the same context as you. 10:31
16 Q. I and I appreciate that you're not an 10:29	16 A. Okay. So the question again was, as I 10:31
17 attorney, so you probably don't know this, but it's 10:29	17 remember it. Have I seen reliable evidence in a 10:31
18 not really appropriate for you to ask me questions. 10:29	18 consumer 10:31
19 I'm going to ask the questions. 10:29	19 MR. KOPEL: Do you want to read back. 10:31
20 Can you please answer my question? 10:29	20 THE WITNESS: Yeah. Sorry. 10:31
21 A. I'll try. 10:29	21 MR. KOPEL: I'll just ask the court reporter 10:31
22 Q. Go ahead. Do you remember the question? 10:29	22 to please read the question one more time. 10:31
23 A. No. 10:29	23 THE WITNESS: Now that I understand reliable. 10:31
Q. Do you believe as a matter of science 10:29	24 MR. KOPEL: That's fine. 10:31
25 it's appropriate to rely on the anecdotal accounts of 10:29	25
Page 42	Page 44
1 two consumers in reaching your conclusions? 10:29	1 (WHEREUPON, the record was 10:31
2 MR. OSTOЛС: Object. Form, foundation, and 10:29	2 read by the reporter.) 10:31
3 mischaracterizes his testimony. 10:29	3 MR. OSTOJIC: Same objections. 10:31
4 Go ahead. 10:29	4 BY THE WITNESS: 10:32
5 BY THE WITNESS: 10:29	5 A. No. 10:32
6 A. Anecdotal evidence is not something I 10:29	6 BY MR. KOPEL: 10:32
7 would rely on 100 percent. In the but I would 10:29	7 Q. Let's talk about driving pests out of the 10:32
8 consider it as the part of the whole the whole 10:30	8 home or out of the building. 10:32
9 data package, if you will, the whole total data 10:30	9 Now, when in the context of the 10:32
10 package. 10:30	10 Bell + Howell devices, we've got the claim: Drive 10:32
11 BY MR. KOPEL: 10:30	11 pests out; correct? 10:32
12 Q. Have you seen reliable evidence that the 10:30	12 A. Yes. 10:32
13 Bell + Howell ultrasonic pest repellers are capable 10:30	13 Q. Okay. What do you interpret that to 10:32
MODEL AND THE RESIDENCE TO THE PROPERTY OF THE	14 mean? 10:32
	15 A. I interpret that to mean that the device 10:32
15 MR. OSTOJIC: Object. Asked and answered. 10:30	16 will drive pests out of the range of their hearing or 10:32
16 But go ahead. 10:30	
17 BY THE WITNESS: 10:30	17 being exposed to the device. 10:32
18 A. That's a long that's a long question. 10:30	18 Q. So if pests are inside of or 10:32
19 Can you say it again? 10:30	19 underneath a floor, for instance, or in a crack in a 10:32
20 MR. KOPEL: Can you please repeat the 10:30	20 floor, would that be included? 10:32
21 question? 10:30	21 MR. OSTOJIC: Object to form. 10:32
22 (WHEREUPON, the record was 10:30	22 BY THE WITNESS: 10:32
	200 A 12 A 12 A 15 A 16
23 read by the reporter.) 10:30	23 A. Included in what? 10:32
23 read by the reporter.) 10:30 24 MR. OSTOJIC: Same objections. Asked and 10:30	24 MR. OSTOJIC: What? 10:32
	24 MR. OSTOЛС: What? 10:32 25 MR. KOPEL: Sure. Let me take a step back. 10:32

1 BY MR, KOPEL: 10:33	1 ultrasonic pest repellers, the Bell + Howell 10:35
Q. If pests in a crack in a floor or 10:33	2 ultrasonic pest repellers are capable of being 10:35
3 underneath a floor, then the ultrasonic sound waves 10:33	3 effective beyond a period of nine days? 10:36
4 would not be able to reach them; correct? 10:33	4 MR. OSTOJIC: Object to form. 10:36
5 A. More than likely. 10:33	5 Go ahead, 10:36
6 Q. Okay. So is so is that area included 10:33	6 BY THE WITNESS: 10:36
7 under your definition of drives pests out? 10:33	7 A. I'm trying to remember the length of time 10:36
8 MR. OSTOJIC: Object to form. 10:33	8 that the six tests that you referenced were 10:36
-	9 conducted. 10:36
	4
1 A. If it was to drive if the ultrasonic 10:33	11 Q. Now, this isn't it's not a memory 10:36
2 repeller drove pests out of a room, let's say, to 10:33	12 test, so if it helps you answer the question, I'm 10:36
3 some area where they could not hear or be exposed to 10:33	13 happy to mark those as exhibits, 10:36
4 the ultrasonic sound, then the answer is yes; and if 10:33	14 A. It would help. 10:36
5 that's behind walls, yes; if that's in cracks, yes; 10:33	15 Q. Okay. 10:36
6 if it's if they can't if they're not exposed to 10:33	16 A. Because I don't know if they were longer 10:36
7 the sound, they can't be repelled. 10:33	17 than nine days or not. 10:36
8 BY MR. KOPEL: 10:34	18 Q. Perfectly understandable, so let's, 10:36
9 Q. Do you think it was it is unreasonable 10:34	19 please the first thing I'm going to hand you is a 10:36
0 for a consumer to understand drives pests out to mean 10:34	20 document that was previously marked as Exhibit 13. 10:36
1 drives pests out of the house? 10:34	21 MR. OSTOЛС: Is this 13 on 10:37
2 A. I do not. 10:34	22 MR. KOPEL: Yes, this was marked as I 10:37
<ol> <li>Q. You think that is a reasonable 10:34</li> </ol>	23 believe at Mr. Mishan's deposition. 10:37
4 interpretation? 10:34	24 THE WITNESS: Okay. So just to be clear, I'm 10:37
5 A. I sure do. 10:34	25 only looking at the inspect reports. 10:37
Page 40	Page
1 MR. OSTOJIC: Object to form, foundation. 10:34	1 MR. KOPEL: Sure. And I'm going to hand you 10:37
2 Go ahead. 10:34	2 three we're going to mark three additional 10:37
2 Go ahead. 10:34 3 BY MR. KOPEL: 10:34	2 three we're going to mark three additional 10:37 3 exhibits. 10:37
2 Go ahead. 10:34 3 BY MR. KOPEL: 10:34 4 Q. Now, have you seen evidence that the 10:34	2 three we're going to mark three additional 10:37
2 Go ahead. 10:34 3 BY MR. KOPEL: 10:34 4 Q. Now, have you seen evidence that the 10:34	2 three we're going to mark three additional 10:37 3 exhibits. 10:37
Go ahead. 10:34  BY MR. KOPEL: 10:34  Q. Now, have you seen evidence that the 10:34  Bell + Howell ultrasonic pest repellers are capable 10:34	2 three we're going to mark three additional 10:37 3 exhibits. 10:37 4 While you're looking that over, I'll 10:37
2 Go ahead. 10:34 3 BY MR. KOPEL: 10:34 4 Q. Now, have you seen evidence that the 10:34 5 Bell + Howell ultrasonic pest repellers are capable 10:34 6 of driving pest out of a house? 10:34	2 three we're going to mark three additional 10:37 3 exhibits. 10:37 4 While you're looking that over, I'll 10:37 5 ask the court reporter to mark three documents. 10:38
Go ahead. 10:34  BY MR. KOPEL: 10:34  Q. Now, have you seen evidence that the 10:34  Bell + Howell ultrasonic pest repellers are capable 10:34  of driving pest out of a house? 10:34  MR. OSTOJIC: Object to form, foundation. 10:34	2 three we're going to mark three additional 10:37 3 exhibits. 10:37 4 While you're looking that over, I'll 10:37 5 ask the court reporter to mark three documents. 10:38 6 The first one is Bates No. 10:38
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Go ahead.  10:34  Q. Now, have you seen evidence that the 10:34  Bell + Howell ultrasonic pest repellers are capable 10:34  MR. OSTOJIC: Object to form, foundation. 10:34  BY THE WITNESS: 10:34  A. No. 10:34  BY MR. KOPEL: 10:34  Q. Same question for a living space. 10:34  Have you seen evidence that the 10:34  Bell + Howell ultrasonic pest repellers are capable 10:34  did driving pests out of a living space. 10:34  A. It would be anecdotal evidence, but 1 go 10:35  A. It would be anecdotal evidence, but 1 go 10:35  that they — the use of repeller could have been 10:35  responsible for what they experienced, what they saw, 10:35  the results. 10:35  Q. Have you seen reliable scientific 10:35  evidence that the Bell + Howell ultrasonic pest 10:35  repellers are capable of driving pests out of a 10:35	2 three we're going to mark three additional 3 exhibits. 10:37 4 While you're looking that over, I'll 10:37 5 ask the court reporter to mark three documents. 10:38 6 The first one is Bates No. 10:38 7 Feuerstein 74 through 85. 10:38 8 I'll ask the court reporter to 10:38 9 please mark this as Exhibits Borth we're up to 3; 10:38 10 right? 3. 10:38 11 (Whereupon, a certain 10:38 12 document was marked Borth 13 Exhibit 3 for 14 identification.) 10:38 15 MR. KOPEL: The second document is Bates Nos. 10:38 16 BHH LLC 1810 through 1815. 10:38 17 I'll ask the court reporter to mark 10:38 18 that down at Borth Exhibit 4. 10:38 19 (Whereupon, a certain document was marked Borth 20 document was marked Borth 21 Exhibit 4 for identification.) 10:38

I	(Whereupon, a certain 10:38		please mark as Borth Exhibit 6 the Deposition 10:47
2	document was marked Borth	2	Transcript of Debbie Feuerstein. 10:47
3	Exhibit 5 for	3	(Whereupon, a certain 10:47
4	identification.) 10:39	4	document was marked Borth
5	MR. OSTOЛС: Would you go over Exhibits 3, 10:39	5	Exhibit 6 for
6	4, and 5, the Bates stamp again. 10:39	6	identification.) 10:47
7	MR, KOPEL: Well, I'll just give them to you 10:39	7	BY MR. KOPEL: 10:47
8	if that's okay. Or or do you have them, Rob? 10:39	8	Q. Dr. Borth, do you have Exhibit 6? 10:47
9	MR. OSTOJIC: Yeah, I have them. 10:39	9	A. I do. 10:48
10	MR. KOPEL: Yeah, no problem. 10:39	10	Q. Have you seen it before? 10:48
11	So Feuerstein 74 through 85 is Borth 10:39	11	A. I have, yeah. I'm assuming that all the 10:48
12	3. 10:39	12	pages are here. 10:48
13	MR. OSTOЛС: Okay. 10:39	13	Q. What is it? 10:48
14	MR. KOPEL: BHH LLC 1810 through 1815 is 4. 10:39	14	A. What is it? It's a videotape well, 10:48
15	MR. OSTOЛС: Uh-huh. 10:39	15	not videotape. 10:48
16	MR. KOPEL: And BHH LLC 712 through 717 is 5. 10;39	16	Joanne I'm just reading the title 10:48
17	MR. OSTOЛС: Got it. Thank you. 10:39	17	page. Joanne Hart and Amanda Park, on behalf of 10:48
18	MR. KOPEL: I'm going to ask the court 10:41	18	themselves and all other similarly situated, 10:48
19	reporter to please repeat the question and then we'll 10:41	19	plaintiffs, versus BHH and Van Hauser, defendants, 10:48
20	wait for her to catch up with us and you'll give your 10:41	20	videotaped deposition of Debbie Feuerstein, taken 10:48
21	answer, please. 10:41	21	at in New York. 10:48
22	THE WITNESS: Okay. 10:42	22	It's I guess that's good enough. 10:48
23	(WHEREUPON, the record was	23	Q. And you read this before you drafted your 10:48
24	read by the reporter.)	24	expert reports in this case; correct? 10:48
25	THE WITNESS: Okay. Could you repeat it one 10:45	25	A. I did, yes. 10:48
	Page 50		Page 52
1	more time, and then I've got an answer. 10:45	1	Q. Okay. Is now, the tests which were 10:48
2	(WHEREUPON, the record was 10:45	2	marked as Borth Exhibits 3, 4, 5, and the document 10:49
3	read by the reporter.) 10:45	l	which I handed to you, which was previously marked as 10:49
4	MR. OSTOJIC: Object to form. 10:45	[	Exhibit 13, was it your contention that these tests 10:49
5	Go ahead. 10:45		were supervised by a department head from the 10:49
6	BY THE WITNESS: 10:45	ŀ	University of Beijing? 10:49
7	A. I have not. 10:45	7	
	BY MR. KOPEL: 10:45		deposition transcripts. 10:49
9	Q. Have you seen reliable evidence that the 10:45	9	•
	Bell + Howell ultrasonic pest repellers are capable 10:45		Exhibit 6 on Page 31. If you see there's four pages 10:49
	of repelling pests in a carpeted room? 10:45		on each? 10:49
12	A. No. 10:46	12	
13	Q. Have you seen reliable evidence that the 10:46	13	
	Bell + Howell ultrasonic pest repellers are capable 10:46	14	•
Ş	of repelling pests in a room with furniture in it? 10:46		says, "The initial testing was conducted in China by 10:50
16	MR. OSTOJIC: Object to form. 10:46		Beijing University Agriculture Department"? 10:50
17	Go ahead. 10:46	17	Do you see that? 10:50
	BY THE WITNESS: 10:46	18	A. Yes. 10:50
19	A. No. 10:46	19	Q. Okay. And okay. Do you see on 10:50
	BY MR. KOPEL: 10:46		Page 32, Line 18, question, "Do you still have a copy 10:50
21	Q. Have you seen reliable evidence that the 10:46		
	Bell + Howell ultrasonic pest repellers are capable 10:46		·
24	of repelling pests in a room with a bed in it? 10:46  A. No. 10:46	23 24	A. I see that. 10:50
25			Q. Okay. Do you understand, based on this, 10:50
23	MR. KOPEL: I'll ask the court reporter to 10:47 Page 51	23	that this is the the department head in Beijing 10:50 Page 53

1 University supervised another test which 10:50	1 Do you see that? 10:55
2 Ms. Feuerstein did not have copies for? 10:51	2 A. I do. 10:55
3 MR. OSTOJIC: Object to form, foundation. 10:51	3 Q. Okay. Does that change your response? 10:55
4 Incomplete. 10:51	4 MR. OSTOJIC: Object to form, foundation. 10:5.
5 THE WITNESS: Before answering that I'd like 10:51	5 But go ahead. 10:55
6 to take time to kind of get the context. 10:51	6 BY THE WITNESS: 10:55
7 MR. KOPEL: Weil that's perfectly fine. 10:51	7 A. It does appear that the university 10:55
8 Go ahead. 10:51	8 professor at Beijing with what I've read up to 10:55
9 THE WITNESS: Okay. 10:53	9 this point, you know, there might be more later, but 10:5
10 MR. KOPEL: Do you remember the question? 10:53	10 up to Page 36 and 37, did not have supervisory 10:55
11 THE WITNESS: No, I would like to have it 10:53	Il control, if you will, over the protocols and the 10:55
12 just repeated. 10:53	12 testing. 10:56
13 MR. KOPEL: Please repeat the question. 10:53	13 BY MR. KOPEL: 10:56
14 (WHEREUPON, the record was 10:53	14 Q. Okay. Can you please turn to Page 56 of 10:56
15 read by the reporter.) 10:53	15 the deposition transcript. 10:56
16 MR. KOPEL: I think I can probably rephrase 10:53	16 A. Okay. 10:56
17 that. 10:53	17 Q. I'm going to recite some lines here for 10:56
	18 the record, but you are welcome to read as much as 10:
	19 you would like for context. 10:57
	20 Here on Page 56, starting with Line 10:57
20 A. As it relates to this Long Whale company 10:53	21 22, question, "Below it says, 'Plug it in' and 10:57
21 that she did she admits that she did not have 10:53	22 there is an ellipsis 'drive pests out.' Do you 10:57
22 copies of it. 10:53	23 see that?"  10:57
23 BY MR. KOPEL: 10:53	
Q. Okay. Do you still contend that the 10:53	24 Answer, "Yes." 10:57
25 department head in Beijing University supervised 10:54 Page 54	25 Question, "Who originally wrote 10:57 Page 5
1 those other tests? 10:54	1 that?" 10:57
2 A. Which other tests? 10:54	2 Answer, "I think my designer took it 10:57
3 Q. The tests found marked as 10:54	3 from the art work we have in the past." 10:57
4 Exhibit Borth 3, 4, 5, and the document previously 10:54	4 I'm skipping over to Page 57, Line 10:57
5 marked as Exhibit 13. 10:54	5 14. Question, "What do you interpret this phrase to 10:5
6 A. Yes. Unless I'm understanding it wrong, 10:54	6 mean?" 10:57
7 I read the chronology as I read the chronology 10:54	7 Answer, "Plug it in, drive pest out" 10:57
8 here, Ms. Feuerstein contracted tests before 10:54	8 exclamation point question mark. 10:57
9 commercialization that she does not have records for, 10:54	4 9 Question, "Correct?" 10:57
10 and then there was a second round of testing 10:54	10 Answer, "Yeah, this is the plug-in 10:57
11 supervised by the professor at Beijing University 10:54	11 unit, so you plug into a C outlet, meaning don't do 10:5'
12 that I understood to be the six reports that are 10:54	12 any work, and then ultrasonic work used to drive 10:5
13 included in the report. 10:54	13 pests out." 10:57
-	14 Question, "Drive pests out of a home 10:57
O. Can you please take a look at Page 36. 10:54	
14 Q. Can you please take a look at Page 36, 10:54 15 Line 19? 10:54	15 or office?" 10:57
15 Line 19? 10:54	
15 Line 19? 10:54 16 A. Yes. 10:54	16 Answer, "Of the area." 10:57
15 Line 19? 10:54 16 A. Yes. 10:54 17 Q. Question, "Had you ever run any tests at 10:54	16 Answer, "Of the area." 10:57 17 Question, "Of the area?" 10:58
15 Line 19? 10:54 16 A. Yes. 10:54 17 Q. Question, "Had you ever run any tests at 10:54 18 Beijing University on the pest repellers since that 10:55	16       Answer, "Of the area."       10:57         17       Question, "Of the area?"       10:58         18       Answer, "Out of the area of room       10:58
15 Line 19?       10:54         16 A. Yes.       10:54         17 Q. Question, "Had you ever run any tests at 10:54         18 Beijing University on the pest repellers since that 10:55         19 time?"       10:55	16       Answer, "Of the area."       10:57         17       Question, "Of the area?"       10:58         18       Answer, "Out of the area of room 10:58         19       where pest repeller is."       10:58
15 Line 19?       10:54         16 A. Yes.       10:54         17 Q. Question, "Had you ever run any tests at 10:54         18 Beijing University on the pest repellers since that 10:55         19 time?"       10:55         20 Answer, "I think we did once or 10:55	16       Answer, "Of the area."       10:57         17       Question, "Of the area?"       10:58         18       Answer, "Out of the area of room       10:58         19       where pest repeller is."       10:58         20       Question, "So this phrase was not       10:58
15       Line 19?       10:54         16       A. Yes.       10:54         17       Q. Question, "Had you ever run any tests at Beijing University on the pest repellers since that 10:55       10:55         19       time?"       10:55         20       Answer, "I think we did once or 10:55         21       twice test with them through one or two years and 10:55	16 Answer, "Of the area." 10:57 17 Question, "Of the area?" 10:58 18 Answer, "Out of the area of room 10:58 19 where pest repeller is." 10:58 20 Question, "So this phrase was not 10:58 21 intended to mean that the repellers could drive pests 10:5
15 Line 19? 10:54  16 A. Yes. 10:54  17 Q. Question, "Had you ever run any tests at 10:54  18 Beijing University on the pest repellers since that 10:55  19 time?" 10:55  20 Answer, "I think we did once or 10:55  21 twice test with them through one or two years and 10:55  22 then then that's it. Yeah, yeah, I think 10:55	16 Answer, "Of the area." 10:57 17 Question, "Of the area?" 10:58 18 Answer, "Out of the area of room 10:58 19 where pest repeller is." 10:58 20 Question, "So this phrase was not 10:58 21 intended to mean that the repellers could drive pests 10:58 22 out of the home or office?" 10:58
15 Line 19? 10:54  16 A. Yes. 10:54  17 Q. Question, "Had you ever run any tests at 10:54  18 Beijing University on the pest repellers since that 10:55  19 time?" 10:55  20 Answer, "I think we did once or 10:55  21 twice test with them through one or two years and 10:55  22 then then that's it. Yeah, yeah, I think 10:55  23 professor, I think left. I think he is no longer at 10:55	16 Answer, "Of the area." 10:57 17 Question, "Of the area?" 10:58 18 Answer, "Out of the area of room 10:58 19 where pest repeller is." 10:58 20 Question, "So this phrase was not 10:58 21 intended to mean that the repellers could drive pests 10:58 22 out of the home or office?" 10:58 23 Answer, "It is the repeller drive 10:58
15 Line 19? 10:54  16 A. Yes. 10:54  17 Q. Question, "Had you ever run any tests at 10:54  18 Beijing University on the pest repellers since that 10:55  19 time?" 10:55  20 Answer, "I think we did once or 10:55  21 twice test with them through one or two years and 10:55  22 then then that's it. Yeah, yeah, I think 10:55  23 professor, I think left. I think he is no longer at 10:55	16 Answer, "Of the area." 10:57 17 Question, "Of the area?" 10:58 18 Answer, "Out of the area of room 10:58 19 where pest repeller is." 10:58 20 Question, "So this phrase was not 10:58 21 intended to mean that the repellers could drive pests 10:58 22 out of the home or office?" 10:58

	and the same of th					
1	pests out from the home?"	10:58	3	1	But go ahead and answer.	11:00
2	Answer, "Right, right."	10:58	-	2	BY THE WITNESS:	11:00
3	And I'll just skip to Line 2	2. Then 10:5	58	3	A. I I see that that I see what yo	
4	this is a question.	10:58			read, that she had the question was: "A	
5	"The use of the multipack				a role in approval each of these pieces of	
	statement is intended to mean that it		ses 10:58		And she answers, "Yes" "bef	
7	all the repellers in the pack, they'll b	e able to 10	0:58	7	hit the market, yes."	11:00
8	drive pests out of their home; correct	rt?" 10	0:58	8	Q. Okay. And, I'm sorry, that wasn	
9	Answer, "Yes."	10:58		9	exactly my question.	11:00
0	Do you see that?	10:58		10	MR. KOPEL: Can you please repear	
1	A. I do.	10:58			1	:00
2	Q. Okay. Does this change yo	our opinion on	10:58	12	(WHEREUPON, the reco	
3	what is meant when the product say	s, "Drive pests	10:58	13	read by the reporter.)	11:00
4	out"?	10:58		14	MR. OSTOJIC: Same objections. F	
5	A. No.	10:58			foundation. He's already asked and answ	
6	Q. Okay. And do you see her	e where	10:58	16	it's also an incomplete hypothetical I thin	k. 11:01
	Ms. Feuerstein says, "The repeller of	lrive pests out	10:58	17		11:01
18	from the home"?	10:58			BY THE WITNESS:	11:01
19	A. I do.	10:58		19	,	11:01
20	Q. Okay. So and do you re			20	BY MR. KOPEL:	11:01
21	be the inventor of the product?	10;5	8	21	Q. Do you disagree with Ms. Feuer	
22	A. It's somewhere in this de	position she	10:59	22	A. I do. 11:	
23	claims to be, yes.	10:59		23	My basis for that is that the wo	
24	Q. Okay. And do you also red				in the product literature prevail.	11:01
25	had supervisory approval over the l	anguage used o	n 10:5 Page 58	925	Q. Okay. But would you agree, bas	sed on this 11:01 Page 6
1	the label?	10:59		1	testimony, that that was the intention of the	11:01
2	MR. OSTOJIC: Object to form	1, foundation.	10:59	2	statement: "Drives pests out"?	11:01
3	BY THE WITNESS:	10:5	59	3	MR. OSTOJIC: Object. Form, foundation	n. 11:01
4	<ul> <li>A. I don't know that I saw tha</li> </ul>	t anywhere in	10:59	4	Asked and answered. Also may cause for him	to 11:02
5	there. Could you point me to it may	ybe?	10:59	5	speculate as to what Feuerstein's intent was or	was 11:02
6	MR. KOPEL: Sure.	10:59		6	not. 11:02	
7	BY MR. KOPEL:	10:59	•	7	To the extent you can answer the	11:02
8	Q. Please take a look at Page	53, Lines 6	10:59	8	question, go ahead.	02
9	through 8.	10:59		9	THE WITNESS: Repeat the question, plo	ease. 11:02
10	Question, "And you had a	a role in 10	:59	10	(WHEREUPON, the record w	as 11:02
11	approval each of these pieces of art	work?"	10:59	11	read by the reporter.) 11:0	02
12	Answer, "Yes."	10:59		12	MR. OSTOJIC: I'm sorry. Objection. I i	
13	A. Then the answer is yes.	10:59	€	13	a clar are you talking about the intent of the	11:02
14	Q. Okay. And does this now	change your	10:59	1	words or the intent of Ms. Feuerstein in that	11:02
15	opinion on what is meant when the	product says,	10:59	15	question? 11:02	
16	"drive pests out"?	10:59		16	MR. KOPEL: I'm not sure there's a	11:02
17	A. It still does not.	10:59		17	distinction, but if there's a distinction, you can	go 11:02
18	Q. Why not?	10:59		18	ahead and say so.	)2
19	A. Because the words "out of	the home" are	10:59	19	BY THE WITNESS:	11:02
20	not written in the product literature	anywhere.	11:00	20	A. You can only I can only go by wha	at's 11:02
21	•		11:00			11:02
22	involved in making that statement	interpreted then	n to 11:0	022	Ms. Feuerstein's mind to know whether she in	tended 11:03
	mean that it drives pests out from t	he home?	11:00	23	one thing or another. I can only reread what s	the 11:03
23	MD OSTOTO, Object to form		11:00	24	says. 11:03	
23 24	MR. OSTOЛС: Object to form	n, foundation.	11.00	24	34,5	
24	Asked and answered. It's also argu		11:00 11:00 Page 59	25	34.75. II.00	Page

_			
	BY MR. KOPEL: 11:03		ahead and answer. 11:05
2	Q. But this is how she interprets her own 11:03	2	•
	statement; correct? 11:03		page are we looking at, pages plural? 11:05
4	MR. OSTOЛС: Object. Form, foundation. May 11:03	4	8 0
	call for speculation as to what the subjective mind 11:03	5	, ,
6	of Feuerstein is thinking. 11:03		back to that. 11:05
7	Frankly, her deposition is - 11:03	7	1 1
8	MR. KOPEL: Counsel, please stop making 11:03		helpful counsel has stated his objection, and I 11:05
9	speaking objections. 11:03		know it's hard to remember the question after the 11:05
0	MR. OSTOJIC: I'm not, but it's conflicting, 11:03	10	objections are made, so I would be happy to stipulate 11:05
l 1	and we're going over the same subject. 11:03	11	that the objections counsel has made already will 11:05
2	Asked and answered.	12	apply and perhaps the court reporter can reread the 11:05
13	To the extent you can answer the 11:03	13	question and witness's answer. 11:05
4	question, you can go ahead and answer. 11:03	14	THE WITNESS: Yes, that would sorry 11:05
5	BY THE WITNESS: 11:03	15	that would be helpful. 11:05
6	A. I just repeat what I said. 11:03	16	(WHEREUPON, the record was 11:05
17	I can only go by what's written 11:03	17	read by the reporter.) 11:06
18	here. 11:03	18	MR, OSTOJIC; Same objections. 11:06
19	BY MR. KOPEL:	19	BY THE WITNESS: 11:06
20	Q. And do you remember what my question was? 11:03	20	A. Her answer, Page 58, Line 7. "It is the 11:06
21	A. I think your question you can tell me 11:03	21	repeller drive pests out from the home." 11:06
22	if I'm wrong was did she intend was her 11:03	22	So question, "Oh, so it means it 11:06
23	intention in those words that it would drive pests 11:03	23	drives pests out from the home?" 11:06
24	out of a house. 11:03	24	"Right, right" was the answer. 11:06
2.5	Q. So it was that wasn't exactly my most 11:03	25	
	Page 62		Page (
1	recent question. 11:03	1	BY MR. KOPEL: 11:06
2	A. Okay. 11:03	2	Q. Is that a yes? 11:06
3	Q. I and, counsel, I know, has a lot of 11:03	3	MR. OSTOJIC: Same objections. 11:06
4	objections regarding my questions, so please try to 11:04	4	BY THE WITNESS: 11:06
5	listen carefully to the question because sometimes it 11:04	5	A. I can't get into Ms. Feuerstein's mind 11:06
6	can get confusing. When counsel makes a lot of 11:04	6	and what she intended. It's clearly written here, 11:06
7	objections, it's hard to remember exactly what the 11:04	7	Lines 7 and 8, the answer, "It is the repeller drive 11:06
8	question was. 11:04	8	the pests out from the home." 11:06
9	Based on this testimony would you 11:04	9	BY MR. KOPEL: 11:07
10	agree that the interpretation of the words drives 11:04	10	Q. Can you just turn back to Page 57 11:07
1	pests out okay. Based on let me rephrase the 11:04	11	briefly, please. I'm looking at Ms. Feuerstein's 11:07
	question. 11:04	12	testimony, Lines 19 through 21, "Meaning don't do any 11:07
13	Based on this testimony, would you 11:04	13	work and then ultrasonic work used to drive pests 11:07
4	•	14	out," 11:07
	pests out interprets that statement to mean drives 11:04	15	Do you see that? 11:07
	pests out from the home? 11:04	16	•
17	MR. OSTOJIC: Objection. Ms. Feuerstein's 11:04	17	
	testimony stands on its own, it's a written document. 11:04		sealing up all entry points within your house that an 11:07
	If you want, you can go through the entire deposition 11:0 <sup>2</sup>		
	testimony, but it's very inappropriate to ask a 11:04	20	
	witness to seek to try to determine the intent of 11:04		literature. 11:08
	another person within their mind interpreting a 11:05	22	
	phrase. 11:05		for the pest repellers to be effective? 11:08
23 24	•	24	
	but to the extent you understand the question, go 11:05	25	
ر۔	Page 63	23	Page (
	1 15		

	MADE MANAGEMENT AND A STATE OF THE STATE OF
1 BY THE WITNESS: 11:08	1 spiders, and roaches are exposed to ultrasonic sound 11:27
2 A. It's circumstantial, I would guess in 11:08	2 waves for extended periods of time, then they will 11:27
3 some cases, yes; in some cases, по. 11:08	3 become habituated to the sound and no longer be 11:27
4 The product literature says the 11:08	4 repelled? 11:27
5 repeller helps I should look at it to be sure I'm 11:08	5 MR. OSTOЛС: Object form as to will. 11:27
6 quoting exactly, but the operative word is it helps 11:08	6 But go ahead. 11:27
7 repel pests, and so other things may be necessary to 11:08	7 BY THE WITNESS: 11:27
8 effect the get the effect you're the customer 11:08	8 A. I do not take that as blanket statement. 11:27
9 desires. 11:08	9 I'd have to see evidence of a 11:28
10 Q. And it also says, "plug it in, drive 11:08	10 particular ant, particular spider, particular roach. 11:28
11 pests out"; correct? 11:08	11 BY MR. KOPEL: 11:28
12 A. It does, yes. 11:08	12 Q. Do you have any opinion as to whether 11:28
13 Q. It doesn't say, "Plug it in and do a 11:08	13 habituation ever occurs with regards to exposure of 11:28
14 bunch of work to drive pests out"; right? 11:08	14 ultrasonic sound waves to ants, spiders, or roaches? 11:28
15 A. It does not. 11:08	15 MR. OSTOЛС: Object to form. 11:28
16 Q. Are you familiar with the concept of 11:08	16 BY THE WITNESS: 11:28
17 habituation? 11:09	17 A. Yes. 11:28
18 A. Yes. 11:09	18 BY MR. KOPEL: 11:28
19 Q. What is it? 11:09	19 Q. What's your opinion? 11:28
20 A. Habituation is a behavior as I would 11:09	A. The opinion is if these insects, 11:28
21 describe it a behavioral response of an organism, 11:09	21 including spiders, are exposed continuously to the 11:28
22 a response to some stimulus that it becomes accustom 11:09	22 same ultrasonic frequency decibel, everything exactly 11:2
23 to, and the the effect of that stimulus decreases 11:09	23 the same, it's possible that they could habituate to 11:28
24 over time as a result of of it being in the 11:09	24 that particular sound well, to that particular 11:28
25 presence of the stimulus. 11:09	25 well, sounds. 11:29
Page 66	Page 68
1 MR. OSTOЛС: Counsel, if we're on a place 11:09	1 Q. What's the basis for your opinion? 11:29
2 I know you went to habituation for the depo. Can we 11:09	A. Education, background in entomology, and 11:29
3 take just two minutes so I can make a quick call on 11:09	3 having classes, and reading texts about habituation. 11:29
4 something else? 11:09	4 Q. Now, when I'm talking about specifically 11:29
5 MR. KOPEL: Yes. 11:09	5 habituation to ultrasonic technology, can you 11:29
6 MR. OSTOЛС: Okay. 11:09	6 identify any studies or a text or any other sources 11:29
7 THE VIDEOGRAPHER: The time is now 11:12 a.m. 11:09	7 on which you're basing your opinion? 11:29
8 This is the end of Media No. 1. 11:09	8 A. It's a general concept that is well borne 11:29
9 We're off the record. 11:10	9 out, and I don't have any any references at my 11:29
10 (WHEREUPON, a recess was 11:10	10 disposal right now to show you. 11:29
11 had.)	Q. Have you seen any evidence to suggest 11:29
12 THE VIDEOGRAPHER: The time is now 11:29 a.m. 11:26	12 that habituation would not occur when using the 11:29
13 This is the beginning of Media 2. 11:26	13 Bell + Howell ultrasonic pest repellers in a 11:29
14 We're back on the record. 11:26	14 residence? 11:29
15 BY MR. KOPEL: 11:26	15 MR. OSTOЛC: Object to form. 11:29
16 Q. Dr. Borth, what does habituation mean in 11:26	16 THE WITNESS: That's that's a long 11:30
17 the context of ultrasonic pest repelling technology? 11:27	17 question 11:30
18 MR. OSTOJIC: Object to form. 11:27	18 MR. KOPEL: Okay. 11:30
19 BY THE WITNESS: 11:27	19 THE WITNESS: could you repeat it or 11:30
20 A. If the court reporter would reread the 11:27	20 rephrase. 11:30
21 answer to your last question, I would say that's what 11:27	MR. KOPEL: Can please repeat the question? 11:30
22 it means in the context of ultrasonic pest repellers. 11:27	22 (WHEREUPON, the record was 11:30
23 MR, KOPEL: That's not necessary. 11:27	read by the reporter.) 11:30
24 BY MR. KOPEL: 11:27	24 MR. OSTOЛС: Same objection. 11:30
25 Q. Do you believe that if if ants, 11:27	25
Page 67	Page 69

1 BY THE WITNES			1 would expect habituation to occur when using a 11:33
2 A. That goes	to prove something that doesn't 11:		2 ultrasonic pest repeller with regards to ants, 11:33
3 exist, which you	know, when you design an 11	1:30 3	3 spiders, and roaches? 11:33
4 experiment, it's ve	ry hard to design something that 1	1:30	4 MR. OSTOJIC: Object to form. 11:33
5 would prove some	thing doesn't exist. 11:30	' 5	5 BY THE WITNESS: 11:33
6 You th	ne opposite is what most 11:30	(	6 A. I can give you a a hypothetical 11:33
7 scientists would sh	now, not what does not exist.	:30	7 because I've not tested it. 11:33
8 BY MR. KOPEL:	11:30	8	8 MR. KOPEL: Okay. Great. 11:33
9 O. Would yo	ou expect that habituation might 11	:30	9 BY THE WITNESS: 11:33
	•	:30 10	0 A. But the hypothetical would be if you have 11:33
11 residential environ			I a container, a — contained insects that cannot 11:33
	depends on the specific - the 11:31		2 escape and they are subjected to the same frequency 11:
	rasonic pest repeller, the 11:31		3 continuously, they may it's not definite, they may 11:3-
-	ails of the residence or room, 11:3		4 develop habituation behavior over time. 11:34
**			5 BY MR. KOPEL: 11:34
15 whatever you said			
	would you expect that 11:31		
	occur when using Bell + Howell		7 your initial expert report, Page 20. 11:34
18 ultrasonic pest rep		18	-
19 environment?	11:31	19	5 1
20 A. No.	11:31	20	<i>y</i> 1
Q. Why not?	11:31	21	, ,
A. Because l	have read that the frequency — 11:	31 22	2 wrong report. Sorry. 11:35
23 the electronics wit	hin the Bell + Howell ultrasonics 1	1:31 23	3 Okay. 11:35
24 was variable, and	it's swept through a range of 11:	31 24	4 Q. And Opinion 14 reads: "Based upon 11:35
25 frequencies. It's n	ot and not continuous. 11:31	25	5 References 4 to 8, 10, 13, I reject the allegation 11:35
		Page 70	Page 7
	44 4		
<ol> <li>Q. Have you</li> </ol>	seen literature showing that use 11:	:31	1 that these devices do not repel pests." 11:35
•	<del>-</del>		1 that these devices do not repel pests." 11:35 2 Do you see that? 11:35
•	<del>-</del>	11:31	
2 of sweeping frequ 3 occurring?	encies prevents habituation from	11:31	2 Do you see that? 11:35
<ul><li>2 of sweeping frequency</li><li>3 occurring?</li><li>4 A. I have no</li></ul>	encies prevents habituation from	11:31	2 Do you see that? 11:35 3 A. Yes. 11:35
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2 of sweeping frequency of sweeping frequency of sweeping frequency of the sweeping frequency of	t; but, again, with what 11:31  t; but, again, with what 11:31  td upon, if you remove the 11:  age the stimulus, you do anything going to delay at least delay 11:32  ate the the phenomenon of 11:32  the of the sweeping frequencies, 11:  habituation to occur with regards to roaches in a residential 11:32  a using the Bell + Howell devices?  I cannot say that, I wouldn't 11:32  don't have the details behind to 11  on confidently. 11:32  littional details would you need? 11  teed to know the the physics 11:32  I'm not a physics expert, I would 12  there the sound was continuous or not now the what do you call it 11	11:31     2       31     3       11:32     6       32     1       11:32     1       11:32     1       12     1       12:32     1       132     1       132     1       132     1       11:32     1       11:32     1       11:33     2       11:33     2       11:33     2	2 Do you see that? 11:35 3 A. Yes. 11:35 4 Q. Okay. And 4 to 8 are Chinese testing of 11:35 5 the Bell + Howell ultrasonic devices; correct? 11:35 6 MR. OSTOJIC: Object to form. 11:35 7 BY THE WITNESS: 11:35 8 A. Yes. 11:35 9 BY MR. KOPEL: 11:35 0 Q. And those those tests are contained 11:35 1 within Exhibits Borth 3, 4, 5, and the document which 11:36 2 I handed to you, which was previously marked as 11:36 3 Exhibit 13; correct? 11:36 4 A. Yes. 11:36 5 Q. Okay. And Reference 13 is referring to a 11:36 6 1984 study performed by Ballard, Gold and T. Decker; 11:36 7 correct? 11:36 8 A. Correct. 11:36 9 Q. And these are and one last thing. 11:36 10 Reference 10 is a chi-square test analysis that you 11:36 11 performed on References 4 through 8; correct? 11:36 12 A. Correct. 11:36
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1	A. In part, yes. 11:37		it goes into your mind, and everything that you 11:39
2	Q. What do you mean by in part? 11:37	2	that you absorb goes into making opinions. 11:39
3	A. Well, I base my opinion on everything, 11:37	3	Q. Did you consider those documents in 11:39
4	totality of everything I looked at, which would 11:37	4	making your opinions in this case? 11:39
5	include everything on this list. 11:37	5	A. No. What I've listed here is certainly 11:39
6	Q. Okay. What else on this list supports 11:37	6	sufficient to draw my opinions from. 11:39
7	that finding?	7	Q. Okay. I'd like to actually talk with you 11:39
8	A. Everything. Referenced in total, 11:37	8	about these Chinese studies first, please; and the 11:40
9	References 1 through 23. Everything I read goes into 11:37	9	first one I'd like to please discuss is dated 11:40
10	making an opinion. 11:37	10	March 23, 2012, and I believe that should be 11:40
11	Q. I understand, but, you know, taken by 11:37		contained within the exhibit previously marked as 13. 11:
	itself, did you find evidence in the First Amended 11:37	12	
	Class Action Complaint that these devices are 11:37		locate that, please. 11:40
	effective to repel pests? 11:37	14	
15	A. First Amended Class Action okay. I 11:37	15	
	have to ask to be repeated again. Sorry. 11:37		referencing an SGS test performed on ants, spiders, 11:4
17	Q. Sure. 11:38	l	and roaches dated March 23, 2012.
18	Taken by itself, did you find any 11:38	18	•
	evidence within the First Amended Class Action 11:38		that, and I'm happy to give you the report number if 11:4
	Complaint that the Bell + Howell devices are 11:38		that's helpful. 11:4I
	effective to respell pests? 11:38	21	1
22	1 1		reports, which one is it? The first one that has 11:41
	· ·		insects from SGS? What was 11:41
	1 1	23 24	
	3		numbers 3439. 11:41
25	Q. Well, the only reason I'm bringing up the 11:38 Page 74	23	Page 76
1	Complaint is that it's No. 1 on your list of 11:38	1	A. Yes, okay. I have that. 11:41
2	references here. 11:38	2	Q. Okay. Now, you've seen this before; 11:41
3	A. Okay. Sure. 11:38	3	correct? 11:41
4	Q. And you said that you relied on all of 11:38	4	A. Yes. 11:41
5	these? 11:38	5	Q. This is one of the seven references from 11:41
6	A. Yes, yes. 11:38	6	Opinion 14 in your initial report; correct? 11:41
7	Q. But I'm trying to make a determination of 11:38	7	A. Yes. 11:41
8	how you could have gotten that from number 11:38	8	Q. Okay. Now, this looks like it was 11:41
9	Reference No. 1? 11:38	9	prepared by someone named Mei, M-e-i, last name L-v. 11:42
10	A. Oh, well, I'm - what I meant by that is 11:38	10	Do you see that? 11:42
11	that everything I read goes into my brain and is used 11:38	11	A. I see that. 11:42
	to draw to make an opinion. 11:38	12	Q. Who is that? 11:42
13		13	A. I have no idea. 11:42
	opinion on any other on any other studies in 11:38	14	
	making in making your opinion that you reject the 11:38		•
	allegation that these devices do not repel pests? 11:39	16	
17	5	17	· ·
	BY THE WITNESS: 11:39	18	
19		l	reviewing you're relying on a test that was 11:42
	case which required me to read things that are not 11:39	1	performed by someone whose qualifications you're 11:42
	included here. 11:39		
	BY MR. KOPEL: 11:39	22	•
23		23	•
٠.	documents? 11:39	24	A. Because I have data here that based on 11:42
24 25	A. No. But, as I said, everything I read 11:39	٠ ـ ـ	what's written with their protocols, their summary; 11:42

	111 11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
1 and the counts that they made, to me, appear I 11:42	1 opinion that this test result is germane to all 11:45
2 mean they were counts, they were raw observations. 11:43	2 models of Bell + Howell pest repellers? 11:45
3 Q. Oh, go ahead. I didn't mean to interrupt 11:43	3 A. Are you leading I can't ask you a 11:45
4 you. 11:43	4 question. 11:45
5 A. I would I mean it's an assumption, but 11:43	5 Q. Well, if you would like a clarification, 11:45
6 you would think that Mei Lv knows what a spider is an 11:43	6 go ahead. 11:45
7 can count them correctly; and ants and spiders 1 11:43	7 A. Yes, please, try to clarify. 11:45
8 mean roaches and ants the same – the same. 11:43	8 Q. Sure. 11:45
9 Q. Do you see on the first page here it 11:43	9 My understanding, based on your 11:45
10 says, "Style No." It says, "Nii"? 11:43	10 testimony, and you're free to correct me if I'm 11:46
11 A. Style number? 11:43	11 wrong, is that you don't know whether this model 11:46
12 Yes, I see that. 11:43	12 utilized static or sweeping frequencies; is that 11:46
13 Q. Okay. So do you know what model 11:43	13 correct? 11:46
14 Bell + Howell ultrasonic pest repellers were used in 11:43	14 A. That's correct. 11:46
15 this test? 11:43	15 Q. Okay. Is that is that relevant to 11:46
16 A. Let me refer most of these details for 11:43	16 your determination of whether this data can be 11:46
17 these are included in my Reference 10, 11:43	17 extended to all models of the Bell + Howell pest 11:46
18 Can I look at that? Because it 11:43	18 repellers? 11:46
19 would 11:43	19 A. Not really, no. 11:46
20 Q. Sure. Look at whatever you need. 11:43	20 Q. Why not? 11:46
21 A help me more quickly answer. 11:43	21 A. Because the under the conditions they 11:46
22 Q. You have that; right? You have 11:43	22 tested we have the results, and so the the 11:46
23 Reference 10 there? 11:43	23 repeller that they tested gave us the results they 11:46
24 A. I do, yes. 11:44	24 gave us. 11:46
25 Q. Okay. Great. 11:44	25 Q. Now, let's say hypothetically that they 11:46
Page 78	Page 80
1 A. So we're that would be No. 3. 11:44	1 used a sweeping frequency model in this test. 11:46
2 Yes, my yes, it says, "Model 11:44	2 A. Uh-huh. 11:46
3 tested was not stated." That's how I worded it. 11:44	3 Q. Would you be comfortable extending the 11:46
4 Q. Now, are you relying on this test in 11:44	4 data from this test to models that do not have 11:46
5 rendering an opinion as to all models of the 11:44	5 sweeping frequencies? 11:46
6 Bell + Howell ultrasonic pest repellers? 11:44	6 A. I believe that the basics of ultrasonic 11:47
7 A. Yes. 11:44	7 technology are going to give you the results that you 11:47
8 Q. Did this model have sweeping frequencies, 11:44	8 have in this under these conditions whether it is 11:47
9 or was it static? 11:44	9 sweeping frequency or not. 11:47
10 A. I can make the assumptions from the 11:44	10 Q. Do you remember testifying earlier that 11:47
_	11 you thought sweeping frequencies might help prevent 11:47
12 variable or sweeping. 11:45	12 habituation? 11:47
13 Q. Is it is it your understanding that 11:45	13 A. I do. 11:47
14 all models of Bell + Howell ultrasonic pest repellers 11:45	
15 are sweeping? 11:45	
16 A. I believe from reading the deposition 11:45	15 where sweeping frequencies might be more effective 11:47  16 than static frequencies? 11:47
17 that there was a point in time when Bell + Howell 11:45	
18 improved I think she used the word improved their 11:43	<u> </u>
18 improved 1 think she used the word improved their 11:4-19 design to move into sweeping frequencies. 11:45	
	19 A. Well, the reason I believe that sweeping 11:47
•	20 frequencies were developed was to increase the 11:47
21 when that was. 11:45	21 efficacy of the unit. 11:47
Q. Do you know if that was before or after 11:45	22 BY MR. KOPEL: 11:48
23 March of 2012? 11:45	Q. What what what information do you 11:48
A. I cannot say with certainty. 11:45	24 need to know in order to make a determination as to 11:48
25 Q. Okay. Is that inquiry relevant to your 11:45 Page 79	25 whether or not this data can be used to make an 11:48 Page 81
	· · · · · · · · · · · · · · · · · · ·

opinion on other models of Bell + Howell repellers? 11:	
	•
MR. OSTOЛС: Wait. I'm sorry. Can you 11:48	_
repeat that question? 11:48	3 by by plaintiff or defendants. Sorry. 11:50
MR. KOPEL: Absolutely. 11:48	4 Q. Okay. Was that the same model device as 11:50
MR. OSTOJIC: Well 11:48	5 pictured here? 11:50
MR. KOPEL: Sure. I'll repeat it. No 11:48	6 A. I'd have to look. I can check it out if 11:51
problem. 11:48	7 you want me to take the time. 11:51
BY MR. KOPEL: 11:48	8 Q. Well, let's take a step back. 11:51
Q. Do you think that any tests ascertaining 11:48	9 You don't know what model device was 11:51
the efficacy of ultrasound technology in general can 11:4	8 10 use here; right? 11:51
be used as evidence of the efficacy of any ultrasound 11:	
device? 11:48	12 Q. Okay. So is there any way to determine 11:51
MR. OSTOJIC: Object to form, foundation. 11:4	
But go ahead. 11:49	14 A. No. Unless no. 11:51
BY THE WITNESS: 11:49	15 Q. Okay. Do you know if this model of 11:51
A. Yes. 11:49	16 Bell + Howell ultrasonic pest repeller was ever even 11:
BY MR. KOPEL: 11:49	17 sold to the general public? 11:51
Q. So as long as it's ultrasound, than it 11:49	18 A. I would assume so or they wouldn't be 11:51
is it is relevant to making a determination as to 11:49	19 testing it. 11:51
whether Bell + Howell devices are effective? 11:49	20 Q. You don't think companies can test things 11:51
MR. OSTOJIC: Object to form, foundation. 11:4	
-	22 A. They can, and I have experience with 11:51
6	23 those. 11:51
BY THE WITNESS: 11:49	
A. There are details underlying 11:49	
ultrasound ultrasonic technology that that would Page 8	
be necessary to know before I could make a 11:49	1 Do you know whether this model of 11:51
generalization, and I generally don't make 11:49	2 Bell + Howell ultrasonic pest repeller that's being 11:51
generalizations. 11:49	3 tested in Report No. SZXWT00603439 was ever sold to 11:51
BY MR. KOPEL: 11:49	4 the general public? 11:51
Q. Okay. So what are those details? 11:49	5 A. Without the model number, I cannot be 11:51
A. The kilohertz, the decibels, number of 11:49	6 sure. 11:51
speakers in the unit, the directional attitude of 11:49	7 Q. So you don't know what the frequency of 11:51
those speakers, the case itself, everything about it, 11:49	8 this device was; correct? 11:51
everything about the unit. 11:49	9 A. I would have to rely on Debbie 11:51
- · · · · · · · · · · · · · · · · · · ·	•
O. Okay, What was the frequency of the 11:49	10 Feuerstein's deposition and the product spec sheet 11:52
Q. Okay. What was the frequency of the devices tested here? 11:49	^ -
devices tested here? 11:49	11 that I inspected, because she said that all the 11:52
devices tested here? 11:49  A. I would have to really look at a lot of 11:49	11 that I inspected, because she said that all the 11:52 12 models were similar. 11:52
devices tested here? 11:49  A. I would have to really look at a lot of 11:49 documents, and the documentation may not be there. 11:50	11 that I inspected, because she said that all the 11:52 12 models were similar. 11:52 13 I'm paraphrasing what she said, 11:52
devices tested here? 11:49  A. I would have to really look at a lot of 11:49 documents, and the documentation may not be there. 11:50  Q. Other than this test right here, what 11:50	<ul> <li>11 that I inspected, because she said that all the 11:52</li> <li>12 models were similar. 11:52</li> <li>13 I'm paraphrasing what she said, 11:52</li> <li>14 but and so the one product spec sheet that I 11:52</li> </ul>
devices tested here? 11:49  A. I would have to really look at a lot of 11:49 documents, and the documentation may not be there. 11:50  Q. Other than this test right here, what 11:50 else would do you think would give you that 11:50	11 that I inspected, because she said that all the 11:52 12 models were similar. 11:52 13 I'm paraphrasing what she said, 11:52 14 but and so the one product spec sheet that I 11:52 15 looked at I can reference, and then I can also bring 11:52
devices tested here? 11:49  A. I would have to really look at a lot of documents, and the documentation may not be there. 11:50  Q. Other than this test right here, what else would do you think would give you that 11:50 information? 11:50	11 that I inspected, because she said that all the 11:52  12 models were similar. 11:52  13 I'm paraphrasing what she said, 11:52  14 but and so the one product spec sheet that I 11:52  15 looked at I can reference, and then I can also bring 11:52  16 up for the first time Dr. Mankin's work and 11:52
devices tested here? 11:49  A. I would have to really look at a lot of documents, and the documentation may not be there. 11:50  Q. Other than this test right here, what else would do you think would give you that information? 11:50  MR. OSTOJIC: Object to form. 11:50	11 that I inspected, because she said that all the 11:52  12 models were similar. 11:52  13 I'm paraphrasing what she said, 11:52  14 but and so the one product spec sheet that I 11:52  15 looked at I can reference, and then I can also bring 11:52  16 up for the first time Dr. Mankin's work and 11:52  17 Q. Okay. Do you know if Dr. Mankin tested 11:52
A. I would have to really look at a lot of documents, and the documentation may not be there. 11:50  Q. Other than this test right here, what 11:50 else would do you think would give you that information? 11:50  MR. OSTOJIC: Object to form. 11:50  BY MR. KOPEL: 11:50	11 that I inspected, because she said that all the 11:52 12 models were similar. 11:52 13 I'm paraphrasing what she said, 11:52 14 but and so the one product spec sheet that I 11:52 15 looked at I can reference, and then I can also bring 11:52 16 up for the first time Dr. Mankin's work and 11:52 17 Q. Okay. Do you know if Dr. Mankin tested 11:52 18 this model? 11:52
devices tested here? 11:49  A. I would have to really look at a lot of documents, and the documentation may not be there. 11:50  Q. Other than this test right here, what 11:50 else would do you think would give you that information? 11:50  MR. OSTOJIC: Object to form. 11:50  BY MR. KOPEL: 11:50  Q. Other than this test labeled as Report 11:50	11 that I inspected, because she said that all the 11:52  12 models were similar. 11:52  13 I'm paraphrasing what she said, 11:52  14 but and so the one product spec sheet that I 11:52  15 looked at I can reference, and then I can also bring 11:52  16 up for the first time Dr. Mankin's work and 11:52  17 Q. Okay. Do you know if Dr. Mankin tested 11:52  18 this model? 11:52  19 A. 1 do not know that. 11:52
devices tested here? 11:49  A. I would have to really look at a lot of 11:49 documents, and the documentation may not be there. 11:50  Q. Other than this test right here, what 11:50 else would do you think would give you that 11:50  MR. OSTOJIC: Object to form. 11:50  BY MR. KOPEL: 11:50  Q. Other than this test labeled as Report 11:50  No. SZXWT00603439, what other document do you think 11:50	11 that I inspected, because she said that all the 11:52  12 models were similar. 11:52  13 I'm paraphrasing what she said, 11:52  14 but and so the one product spec sheet that I 11:52  15 looked at I can reference, and then I can also bring 11:52  16 up for the first time Dr. Mankin's work and 11:52  17 Q. Okay. Do you know if Dr. Mankin tested 11:52  18 this model? 11:52  19 A. I do not know that. 11:52  20 Q. Does that concern you? 11:52
devices tested here? 11:49  A. I would have to really look at a lot of 11:49 documents, and the documentation may not be there. 11:50  Q. Other than this test right here, what 11:50 else would do you think would give you that 11:50 mR. OSTOJIC: Object to form. 11:50  BY MR. KOPEL: 11:50  Q. Other than this test labeled as Report 11:50 No. SZXWT00603439, what other document do you think 11:50 might give you that information? 11:50	11 that I inspected, because she said that all the 11:52  12 models were similar. 11:52  13 I'm paraphrasing what she said, 11:52  14 but and so the one product spec sheet that I 11:52  15 looked at I can reference, and then I can also bring 11:52  16 up for the first time Dr. Mankin's work and 11:52  17 Q. Okay. Do you know if Dr. Mankin tested 11:52  18 this model? 11:52  19 A. 1 do not know that. 11:52  10 Q. Does that concern you? 11:52  21 A. Well, not actually, no. 11:52
A. I would have to really look at a lot of 11:49  documents, and the documentation may not be there. 11:50  Q. Other than this test right here, what 11:50  else would do you think would give you that 11:50  MR. OSTOJIC: Object to form. 11:50  BY MR. KOPEL: 11:50  Q. Other than this test labeled as Report 11:50  No. SZXWT00603439, what other document do you think 11:50  might give you that information? 11:50  A. In my experience a document that is 11:50	11 that I inspected, because she said that all the 11:52  12 models were similar. 11:52  13 I'm paraphrasing what she said, 11:52  14 but and so the one product spec sheet that I 11:52  15 looked at I can reference, and then I can also bring 11:52  16 up for the first time Dr. Mankin's work and 11:52  17 Q. Okay. Do you know if Dr. Mankin tested 11:52  18 this model? 11:52  19 A. 1 do not know that. 11:52  20 Q. Does that concern you? 11:52  21 A. Well, not actually, no. 11:52  22 Q. Why not? 11:52
A. I would have to really look at a lot of 11:49  documents, and the documentation may not be there. 11:50  Q. Other than this test right here, what 11:50 else would do you think would give you that information? 11:50  MR. OSTOJIC: Object to form. 11:50  BY MR. KOPEL: 11:50  Q. Other than this test labeled as Report 11:50  No. SZXWT00603439, what other document do you think might give you that information? 11:50  A. In my experience a document that is 11:50  commonly referred to as a product specification sheet 11:50	11 that I inspected, because she said that all the 11:52 12 models were similar. 11:52 13 I'm paraphrasing what she said, 11:52 14 but and so the one product spec sheet that I 11:52 15 looked at I can reference, and then I can also bring 11:52 16 up for the first time Dr. Mankin's work and 11:52 17 Q. Okay. Do you know if Dr. Mankin tested 11:52 18 this model? 11:52 19 A. I do not know that. 11:52 10 Q. Does that concern you? 11:52 21 A. Well, not actually, no. 11:52 22 Q. Why not? 11:52 23 A. Because these are ultrasonic repellers 11:52
A. I would have to really look at a lot of 11:49  documents, and the documentation may not be there. 11:50  Q. Other than this test right here, what 11:50 else would do you think would give you that information? 11:50  MR. OSTOJIC: Object to form. 11:50  BY MR. KOPEL: 11:50  Q. Other than this test labeled as Report 11:50  No. SZXWT00603439, what other document do you think might give you that information? 11:50  A. In my experience a document that is 11:50  commonly referred to as a product specification sheet 11:50  would include that information. 11:50	11 that I inspected, because she said that all the 11:52 12 models were similar. 11:52 13 I'm paraphrasing what she said, 11:52 14 but and so the one product spec sheet that I 11:52 15 looked at I can reference, and then I can also bring 11:52 16 up for the first time Dr. Mankin's work and 11:52 17 Q. Okay. Do you know if Dr. Mankin tested 11:52 18 this model? 11:52 19 A. 1 do not know that. 11:52 10 Q. Does that concern you? 11:52 21 A. Well, not actually, no. 11:52 22 Q. Why not? 11:52 23 A. Because these are ultrasonic repellers 11:52 24 and they're sold as such and I have faith I guess you 11:52
A. I would have to really look at a lot of 11:49  documents, and the documentation may not be there. 11:50  Q. Other than this test right here, what 11:50 else would do you think would give you that information? 11:50  MR. OSTOJIC: Object to form. 11:50  BY MR. KOPEL: 11:50  Q. Other than this test labeled as Report 11:50  No. SZXWT00603439, what other document do you think might give you that information? 11:50  A. In my experience a document that is 11:50  commonly referred to as a product specification sheet 11:50	11 that I inspected, because she said that all the 11:52 12 models were similar. 11:52 13 I'm paraphrasing what she said, 11:52 14 but and so the one product spec sheet that I 11:52 15 looked at I can reference, and then I can also bring 11:52 16 up for the first time Dr. Mankin's work and 11:52 17 Q. Okay. Do you know if Dr. Mankin tested 11:52 18 this model? 11:52 19 A. 1 do not know that. 11:52 10 Q. Does that concern you? 11:52 21 A. Well, not actually, no. 11:52 22 Q. Why not? 11:52 23 A. Because these are ultrasonic repellers 11:52 24 and they're sold as such and I have faith I guess you 11:52 25 could say that it's producing ultrasonic sound or you 11:52

			· · · · · · · · · · · · · · · · · · ·
1	wouldn't see the results that you do. 11:52	1	BY MR. KOPEL: 11:54
2	Q. And as long as it's ultrasonic sound, 11:52	2	Q. Even though those devices have fewer 11:54
3	it's all the same? 11:53	3	speakers than the device here? 11:54
4	MR. OSTOJIC: Object to form, foundation. 11:53	4	A. If it works, it works. 11:54
5	BY THE WITNESS: 11:53	5	MR. OSTOЛС: Object to form. 11:54
6	A. Of course not. 11:53	6	BY MR. KOPEL: 11:54
7	BY MR, KOPEL: 11:53	7	Q. So is it relevant how many speakers a 11:54
8	Q. Okay. So let's go back to my question 11:53	8	device has? 11:54
9	before. 11:53	9	A. I think it is. 11:54
10	Does it concern you that you didn't 11:53	10	Q. Okay. If it's relevant, then how are you 11:54
11		11	comfortable, nonetheless, extending these results 11:54
12	this device? 11:53	12	with other devices which may potentially have a 11:55
13	A. It would be supplemental information. It 11:53		different amount of speakers? 11:55
14	doesn't concern me in making my opinion. 11:53	14	-
15	Q. Why not? 11:53	15	Argumentative. 11:55
16	•	16	
	ultrasound. The results bear out that there was an 11:53		BY THE WITNESS: 11:55
	effect of the repeller, and so it doesn't concern me. 11:53	18	
19	* '		were produced in an experiment testing the repellency 11:55
	contain? 11:53		of an ultrasonic device, and whether those data or 11:55
21	A. I do not know. 11:53		whether the device has two speakers or one speaker, 11:55
22			it it I don't need to know that to interpret 11:55
23	A. Well, not insofar as the counts that 11:53		and to analyze the data that came out the specimen 11:55
	they that they made, no well, I don't 11:53		count. 11:55
F	understand why it would. 11:53	25	
23	Page 86	23	Page 88
1	Q. Does it matter how many speakers a device 11:53	1	BY MR. KOPEL; 11:55
1	has in terms - 11:53	2	
3	A. It can. 11:53		and analyze the data that came out, but my question 11:55
4			is something different than that. 11:55
5	A. Sorry. 11:53	5	-
6	Q. Does it matter how many speakers a device 11:53		extending this data to models that have a different 11:55
-	has in terms of ascertaining its efficacy? 11:53	i	number of speakers than this model? 11:56
8		8	1
9			Asked and answered. 11:56
	speakers, would you feel comfortable saying devices 11:54		
1	with one speaker are effective based on the data 11:54		BY THE WITNESS: 11:56
	<del>-</del>	[	
13	•	12	A. Yes. 11:56 BY MR. KOPEL: 11:56
	A. I would say that the head count or the 11:54 specimen count that they made is what I'm relying 11:54		
	• • •	1	
	is what I'm basing my opinion on. 11:54  MR. KOPEL: Can you repeat my question. 11:54		size of these speakers? 11:56
16			
	please? 11:54	17	£
18	(WHEREUPON, the record was 11:54		these speakers to other Bell + Howell models? 11:56
		19	A. No. 11:56
19			O What world
19 20	MR. OSTOJIC: Object to form. 11:54	20	
19 20 21	MR. OSTOJIC: Object to form. 11:54 Go ahead. 11:54	20 21	A. My purpose for this for this role did 11:56
19 20 21 22	MR. OSTOJIC: Object to form. 11:54 Go ahead. 11:54 BY THE WITNESS: 11:54	20 21 22	A. My purpose for this for this role did 11:56 not include experimentation with different devices. 11:56
19 20 21 22 23	MR. OSTOJIC: Object to form. 11:54 Go ahead. 11:54 BY THE WITNESS: 11:54 A. If the experiment bears out, yes, I would 11:54	20 21 22 23	A. My purpose for this for this role did 11:56 not include experimentation with different devices. 11:56 Q. Now, let's say other Bell + Howell 11:56
19 20 21 22 23 24	MR. OSTOJIC: Object to form. 11:54 Go ahead. 11:54 BY THE WITNESS: 11:54 A. If the experiment bears out, yes, I would 11:54 be comfortable. 11:54	20 21 22 23 24	A. My purpose for this for this role did 11:56 not include experimentation with different devices. 11:56 Q. Now, let's say other Bell + Howell 11:56 devices had different size speakers than these, would 11:56
19 20 21 22 23	MR. OSTOJIC: Object to form. 11:54 Go ahead. 11:54 BY THE WITNESS: 11:54 A. If the experiment bears out, yes, I would 11:54 be comfortable. 11:54	20 21 22 23 24	A. My purpose for this for this role did 11:56 not include experimentation with different devices. 11:56 Q. Now, let's say other Bell + Howell 11:56

1	2 those other models? 11:56 3 A. Yes. 11:56 4 Q. How about speaker direction? Do you have 1 5 any data on that for this model? 11:56 6 A. No. 11:56	:56	2 of this model was; correct? 11:58 3 A. That's correct. 11:58
3 A. Yes.	3 A. Yes. 11:56 4 Q. How about speaker direction? Do you have 1 5 any data on that for this model? 11:56 6 A. No. 11:56	:56	3 A. That's correct. 11:58
4 Q. But you're still using this data to 11:58	Q. How about speaker direction? Do you have 1 any data on that for this model? 11:56 A. No. 11:56	:56	
5 any data on that for this model?	5 any data on that for this model? 11:56 6 A. No. 11:56		A O Put you're still using this data to 11.50
6 A. No.	6 A. No. 11:56	ı	4 Q. Dut you're still using this data to 11.36
7 Q. Okay. Is that relevant?			5 render an opinion on other models that may or may not 11:58
8	7 O Okay Is that relevant? 11:57		6 have different speaker sizes? 11:58
8			7 MR. OSTOJIC: Object. Asked and answered, 11:58
9   Q. Okay.   11:57   10   A. And I've said that in the report.   11:57   12 you make an effort to determine what the speaker   11:57   13 direction was?   11:57   15 at the data that were produced and determine if it   11:57   15 at the data that were produced and determine if it   11:57   16 supported the claims made on the produce iterature.   11:57   16 supported the claims made on the produce iterature is   11:57   16 supported the claims made on the produce iterature is   11:57   18 on a device that has a speaker with a different   11:57   19 direction or a different size?   11:57   19 direction or a different size?   11:57   12 purple of the claims made on the produce iterature is   11:57   15 make a different size?   11:57   15 make a different size speaker,   11:57   15 make a different size speaker, different   11:58   11:58   11:58   11:58   11:58   11:59   11			8 but go ahead. 11:58
10	9 O. Okay. 11:57		
11   Q. Okay. So if it's relevant, why didn't   11:57   12 you make an effort to determine what the speaker   11:57   13 direction was?   11:58   11:58   13 direction was?   11:58   11:58   13 direction was?   11:58   13 direction was; or was?   11:59   15 at the data that were produced and determine if it   11:57   15 at the data that were produced and determine if it   11:57   17 Q. Even — even if the product literature is   11:57   18 on a device that has a speaker with a different   11:57   18 on a device that has a speaker with a different   11:57   19 direction or a different size?   11:57   11:57   12 evidence, but go abead and answer.   11:57   12 evidence, but go abead and answer.   11:57   12 evidence, but go abead and answer.   11:57   12 ms. A. My opinions are—are on Bell + Howell   11:59   12 ms. A. My opinions are—are on Be	· · · · · · · · · · · · · · · · · · ·	1	10 A. Iam. 11:58
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25 MR. KOPEL: Sure. Yeah, yeah.  11:57 Page 90  1 BY MR. KOPEL: 11:57 2 Q. Does that hold true even if the product 11:57 3 literature you're referring to is is contains a 11:57 4 product that has a different size speaker, different 11:58 5 number of speakers, different speaker direction? 11:58 6 MR. OSTOJIC: Object to form, foundation, 11:58 7 also may misstate the evidence. 11:58 8 But go ahead. 11:58 9 BY THE WITNESS: 11:58 10 A. Yeah, I when you say product 11:58 11 literature, I need to know are you talking back to 11:58 12 the published tests, the research that we 11:58 13 BY MR. KOPEL: 11:58 14 Q. I just used the words product literature 11:58 15 because you did. 11:58 16 A. Okay. 11:58 17 Q. So if you want me to take a step back, 11:58 18 I'm happy to. 11:58 19 A. Yeah, that might help, because I'm 11:58 20 and I'm sorry, because I'm going to ask you some 11:58 21 Q. Okay. So and I'll take a step back, 11:58 22 and I'm sorry, because I'm going to ask you some 11:58 23 questions that you've already answered, but I think 11:58 24 It would be helpful just to establish the foundation 11:58 25 Dr. Potter's work, you said that studies from 11:59 2 Bell + Howell devices because they weren't 11:59 2 Bell + Howell devices because they weren't 11:59 2 Bell + Howell devices because they weren't 11:59 3 potentially had different speaker sizes. 11:59 4 Do you recall saying that? 11:59 5 A. That was one of the examples, yeah. 11:59 7 doing here from what you're criticizing Dr. Potter 11:59 8 from doing? 11:59 9 A. Because I am looking at the data that was 11:59 10 supplied to me, and I analyzed it, I rendered an 11:59 11:59 12 Q. And how is it different speaker sizes. 11:59 12 Q. And how is it different speaker sizes. 11:59 13 Dr. Potter did? 12:00 14 A. Well, Dr. Potter's experiments 12:00 15 because you did. 16 have misunderstood the question. 12:00 18 of published studies regarding non Bell + Howell 12:00 18 of published studies regarding non Bell + Howell 12:00 20 him for using that data	, ,	2	23 of the opinion. 11:59
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14 Q. I just used the words product literature 11:58 12:00 15 because you did. 11:58 15 Q. I'm sorry to interrupt you. You might 12:00 16 A. Okay. 11:58 16 have misunderstood the question. 12:00 17 Q. So if you want me to take a step back, 11:58 17 I'm talking about Dr. Potter's use 12:00 18 I'm happy to. 11:58 18 of published studies regarding non Bell + Howell 12:00 20 confused. 11:58 20 him for using that data to render an opinion on the 12:00 21 Q. Okay. So and I'll take a step back, 11:58 21 efficacy of Bell + Howell repellers; is that correct? 12:00 22 and I'm sorry, because I'm going to ask you some 11:58 22 A. That is correct. 12:00 23 questions that you've already answered, but I think 11:58 23 Q. Okay. 12:00 24 it would be helpful just to establish the foundation 11:58 24 A. Yes. 12:00 25 again. 11:58 20 Q. And one reason you identified is that 12:00			*
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25 again. 11:58 25 Q. And one reason you identified is that 12:00	23 questions that you've already answered, but I think 1.		
	-		74 A Voc 12:00
	24 it would be helpful just to establish the foundation 11		
Page 91 Page 93	24 it would be helpful just to establish the foundation 11 25 again. 11:58	2	Q. And one reason you identified is that 12:00

1 is that the the repellers might contain different 12:00	1 model after that, so it wasn't just this model. 12:02
2 numbers of speakers. 12:00	2 BY MR, KOPEL: 12:02
3 Do you remember saying that? 12:00	3 Q. Ycah, but you've done anything to confirm 12:02
4 A. Yes. 12:00	4 that these models have the same specifications as the 12:02
5 Q. Okay. How is that — how is that 12:00	5 other Bell + Howell pest repellers; correct? 12:02
6 different than what you did here? 12:00	6 MR. OSTOJIC: Same objection, 12:02
7 A. Because these are Bell + Howell these 12:00	7 BY THE WITNESS: 12:02
8 were Bell + Howell devices that I'm analyzing. 12:00	8 A. I I did, I looked at the product spec 12:02
9 Q. Do some Bell + Howell 12:00	9 sheet for a model, I looked at Mankin's results, and 12:02
10 A. He 12:00	10 I concluded that they produced ultrasonic sound. 12:03
11 Q. I'm sorry, No, I didn't mean to 12:00	11 BY MR. KOPEL: 12:03
12 interrupt you. Go ahead. 12:01	12 Q. Can you explain why you criticize 12:03
13 A. The published literature back from the 12:01	13 Dr. Potter for using test results of models that 12:03
14 '80s and '90s did not include Bell + Howell devices. 12:01	14 potentially have two different numbers of speakers 12:03
15 Q. So is the relevant analysis whether or 12:01	15 whereas you did the same thing? 12:03
16 not it has the same name on the device; is that the 12:01	16 MR. OSTOЛС: Object. Argumentative. Also 12:03
17 relevant analysis? 12:01	17 asked and answered. And to the form of the question. 12:03
18 A. Well the relevance of the name is that 12:01	18 If you want you can refresh your 12:03
19 it the manufacturer manufacturers a device to 12:01	19 recollection by looking at your report where you make 12:03
20 their specifications. 12:01	20 that criticism. 12:03
21 We don't know whether the devices 12:01	21 THE WITNESS: Can you point me to where that 12:03
22 that were tested in the '80s and '90s have the same 12:01	22 criticism is? 12:03
23 specifications as Bell + Howell. 12:01	23 BY MR, KOPEL: 12:05
24 And when I say specifications, I 12:01	Q. I'm looking at Page 18 of your rebuttal 12:05
25 don't just mean just frequencies and decibels. I 12:01 Page 94	25 report. 12:05 Page 96
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	A ALMOVI NOPPLET
1 mean, you know, the whole package. 12:01	1 A. Okay. I'm there. 12:05
2 Q. Do all Bell + Howell devices contain the 12:01	2 Q. Okay. I'm looking at the second 12:05
3 same number of speakers? 12:01	3 paragraph. You said here, "Since ultrasound is 12:05
4 A. At this time I don't know. I mean in 12:01	4 unidirectional, the directional position of the 12:06
5 this Ms. Feuerstein said in her deposition that 12:01	5 speakers within the case is vitally important to the 12:06
6 the devices evolved over improved over time. That 12:02	6 effectiveness of the device. Speaker number, size 12:06
7 was her her terminology. 12:02	7 and direction, are examples of several independent 12:06
8 So when you say do all of them have, 12:02	8 variables/components within all ultrasonic brands and 12:06
9 I don't know I suspect it might be different 12:02	9 models that can vary and thus variably affect device 12:06
	9 models that can vary and thus variably affect device 12.00
10 because they've been selling them for X number of 12:02	10 efficacy. This goes to my opinionated position that 12:06
10 because they've been selling them for X number of 12:02 11 years. 12:02	
	10 efficacy. This goes to my opinionated position that 12:06
11 years. 12:02	10 efficacy. This goes to my opinionated position that 12:06 11 it's incumbent upon scientists to stay the 12:06
11 years.   12:02   12   Q. Okay. So if if one model has two   12:02	10 efficacy. This goes to my opinionated position that 12:06 11 it's incumbent upon scientists to stay the 12:06 12 conservative course and not assume or make misleading 12:06 13 proclamations that an untested device would perform 12:06
11 years. 12:02 12 Q. Okay. So if if one model has two 12:02 13 speakers and one model has one, are those the same 12:02 14 specifications? 12:02	10 efficacy. This goes to my opinionated position that 12:06 11 it's incumbent upon scientists to stay the 12:06 12 conservative course and not assume or make misleading 12:06 13 proclamations that an untested device would perform 12:06 14 as well or as poorly as tested devices under the same 12:06
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11 years.       12:02         12 Q. Okay. So if if one model has two       12:02         13 speakers and one model has one, are those the same       12:02         14 specifications?       12:02         15 A. No.       12:02         16 Q. Okay. But, nonetheless, you've extended       12:02         17 the test results from this model onto all all       12:02         18 models of Bell + Howell pest repellers; correct?       12:02         19 A. Well       12:02         20 MR. OSTOJIC: Object. Asked and answered       12:02         21 like four or five times.       12:02         22 But go ahead.       12:02         23 BY THE WITNESS:       12:02         24 A. This model and the next model you're       12:02	10 efficacy. This goes to my opinionated position that 12:06 11 it's incumbent upon scientists to stay the 12:06 12 conservative course and not assume or make misleading 12:06 13 proclamations that an untested device would perform 12:06 14 as well or as poorly as tested devices under the same 12:06 15 experimental conditions even if certain other 12:06 16 variables, components, and functionalities are 12:06 17 similar." 18 Do you see that? 12:06 19 A. Yes. 12:06 20 Q. Okay. Are you doing the same thing 12:06 21 you're criticizing in in using this report to 12:06 22 render an opinion that all Bell + Howell models are 12:06 23 effective? 12:06 24 A. I do not believe so because they're 12:06
11 years.       12:02         12 Q. Okay. So if if one model has two       12:02         13 speakers and one model has one, are those the same       12:02         14 specifications?       12:02         15 A. No.       12:02         16 Q. Okay. But, nonetheless, you've extended       12:02         17 the test results from this model onto all all       12:02         18 models of Bell + Howell pest repellers; correct?       12:02         19 A. Well       12:02         20 MR, OSTOJIC: Object. Asked and answered       12:02         21 like four or five times.       12:02         22 But go ahead.       12:02         23 BY THE WITNESS:       12:02	10 efficacy. This goes to my opinionated position that 12:06 11 it's incumbent upon scientists to stay the 12:06 12 conservative course and not assume or make misleading 12:06 13 proclamations that an untested device would perform 12:06 14 as well or as poorly as tested devices under the same 12:06 15 experimental conditions even if certain other 12:06 16 variables, components, and functionalities are 12:06 17 similar." 18 Do you see that? 12:06 19 A. Yes. 12:06 20 Q. Okay. Are you doing the same thing 12:06 21 you're criticizing in in using this report to 12:06 22 render an opinion that all Bell + Howell models are 12:06 23 effective? 12:06 24 A. I do not believe so because they're 12:06 25 manufactured by Bell + Howell. 12:06

1 Q. Okay, And I'm sorry to interrupt. 12:06	1 (WHEREUPON, the record was
2 A. And Ms. Feuerstein testified that there's 12:06	2 read by the reporter.) 12:09
3 a there's a lineage of devices improved over time, 12:07	3 BY THE WITNESS: 12:09
4 and the same technology is in each of them. 12:07	4 A. That depends on the laboratory let's say, 12:09
5 Q. But speaker number, size, and direction, 12:07	5 their laboratory. 12:09
6 these are all variables that you did not compare 12:07	6 You could have a technician who is 12:09
7 these devices to the other models on; correct? 12:07	7 just following orders; and if the protocol was 12:09
-	
9 MR. OSTOЛС: Object. Asked and answered, 12:07	9 technician's job was to count the insects, then it 12:09
10 MR, KOPEL: Let's move on. 12:07	10 does in my opinion it does not it is not 12:10
11 BY MR. KOPEL: 12:07	11 important for that technician to be an expert in 12:10
12 Q. Please turn back to the study we were 12:07	12 protocol design. 12:10
13 discussing, the one ending in 3439. I'm still on the 12:07	13 BY MR. KOPEL: 12:10
14 first page. 12:07	14 Q. Would the food that you're feeding the 12:10
15 A. 3439. First page. 12:07	15 insects be part of a protocol? 12:10
16 Okay. 12:07	16 MR. OSTOJIC: Object to form, foundation, 12:10
17 Q. See Comments, Remark section? 12:07	17 BY THE WITNESS: 12:10
18 A. Yes. 12:07	18 A. If food was being used, yes. 12:10
19 Q. It says, "Canceled bread and white 12:07	19 BY MR, KOPEL: 12:10
20 granulated sugar as food for spiders on 12 March 12:07	20 Q. Okay. So it appears that whoever made 12:10
21 2012, the spiders were not eating and drinking." 12:07	21 this protocol was inexperienced; correct? 12:10
•	
23 A. Yes. 12:08	23 me whoever designed the protocol and put it to 12:10
Q. Okay. Do you spiders eat bread and white 12:08	24 words that that bread and white granulated sugar 12:10
25 granulated sugar? 12:08	25 should be included in the spider testing. 12:10
Page 98	Page 100
1 A. Not in my experience. 12:08	1 BY MR. KOPEL: 12:10
2 Q. Okay. Does that make you question the 12:08	2 Q. Does that give you any concern as to the 12:10
3 competence of the people running this report this 12:08	3 reliability of what was done in this study? 12:10
4 testing? . 12:08	4 A. No. 12:10
5 A. It tells me that they were inexperienced 12:08	5 Q. Please turn to the next page. 12:10
6 in protocol design. 12:08	6 Under the under the Object 12:10
7 Q. Is it important for someone to have 12:08	7 heading, the last line says, "Both frequency and 12:10
8 experience in protocol design when running tests like 12:08	8 sound pressure (DB) are important parameters." 12:10
9 this? 12:08	9 Do you see that? 12:11
	10 A. I do. 12:11
· ·	11 Q. Do they do they say that speaker size 12:11
12 MR. OSTOJIC: Object. Asked and answered. 12:08	12 is an important parameter? 12:11
13 But go ahead. 12:08	13 A. It does not state that. 12:11
14 BY THE WITNESS: 12:08	Q. Do they say that speaker the number of 12:11
15 A. It's a subjective word. 12:08	15 speakers is an important parameter? 12:11
16 BY MR. KOPEL; 12:08	16 A. It does not say that. 12:11
17 Q. Well, you're rendering opinions in this 12:08	Q. Does it say that speaker direction is an 12:11
18 case; right? 12:08	18 important parameter? 12:11
19 Is it your opinion that it's 12:08	19 A. It does not say that. 12:11
20 important? 12:08	Q. Please look at the next page. There's a 12:11
21 A. All right. Please read the question 12:08	21 heading title, "Preparation and Handling of 12:11
22 again, Sorry. 12:08	22 Ants/Spiders/Roaches." 12:11
23 MR. KOPEL: Do you know what question the 12:09	23 Do you see that? 12:11
24 witness is referring to? 12:09	24 A. Yes. 12:11
25 Sorry. 12:09	25 Q. Now, here it says that "As spiders are 12:11
Page 99	Page 101
1 456 33	1 4 20 101

	larger aı	nd far more aggress	ive than ants and roach	ies, 12:11	1	MR. OSTOJIC: Object to form. 12:14
2	they car	ı, and often do, kill	smaller pests like ants	12:11	2	BY THE WITNESS: 12:14
3	and road	ches. Therefore, the	e testing of spiders and	12:11	3	A. It could be. You have to look at the 12:14
4	ants/roa	iches must be condu	cted separately in	12:11	4	data to find out if it was confounding or not. 12:14
5	differen	t times."	12:11		5	BY MR. KOPEL: 12:14
6		Do you see that?	12:11		6	Q. Would you agree that that could 12:14
7	Α,	Yes.	12:11		7	potentially render the data from that from that 12:14
8	O.	Do you agree with	that statement?	12:11	8	test unreliable? 12:14
9		Not 100 percent.	12:11		9	A. No. I'd have to say that the data that 12:14
10	Q.		12:12		1	comes out of that is worth something because you want 12:14
11	•	Because ants can b		12:12		to you want to gather all the data that you 12:14
12			you say ants can be ver			possibly can, 12:14
				1	l	-
		_	at they can be aggressi	ve 12:11	l	. , , , , , , , , , , , , , , , , , , ,
		roaches?	12:12			with pest infestations in private homes? 12:14
15		They could be.	12:12		15	A. Yes. 12:14
16		Okay. Now, do yo	·	12:12	16	· ·
	_	with the second sen		12:12		spiders and roaches at the same time in the same 12:14
			piders and ants/roaches		18	home? 12:14
19	must be	conducted separate	ely in different times"?	12:12	19	A. I am not I cannot answer that. It 12:14
20	A.	That would be idea	al. 12:12		20	would be a there's no reason not to believe they 12:15
21	Q.	Do you agree with	it? 12:12	2	21	can. 12:15
22	A.	Well, it depends	I do not agree whole	12:12	22	Q. Have you ever seen it? 12:15
23	heart	I mean in without	t reservation or withou	t 12:12	23	A. No. 12:15
24	qualific	ation because when	the word must be, it	12:12	24	Q. Would you suppose I'm sorry. Were you 12:15
25	depends	s on the purpose of t	the test. 12	2:12	25	done with your answer? 12:15
				Page 102	_	Page
1	·-	Well, okay. If do ye	=		1	A. Yeah, because even the word 12:15
	-	at roaches?	12:13			infestation is subjective. I don't know what you 12:
3		Yes.	12:13		3	mean by infestation. 12:15
4		Okay. Now, would yo		13	4	01 11 0
5	presence	of a roach in a certain	area might affect 12:1	13		everywhere, crawling over the table, crawling, you 1
C	the move	ement of the spider?	12:13		6	know, that's one thing as opposed to there's one 12:
O						
7	Α.	If yes. However, le			7	spider web up in the corner of the room, and the same
	Α.	If yes. However, le			l .	spider web up in the corner of the room, and the same thing goes for roaches. 12:15
7 8		If yes. However, le What we're not talkin	t me elaborate. 12:13		l .	thing goes for roaches. 12:15
7 8 9	the speci	If yes. However, let What we're not talkin ies of spider or the spec	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13		8 9	thing goes for roaches. 12:15 It's a subjective infestation is 12:15
7 8 9 10	the speci	If yes. However, let What we're not talkin ies of spider or the spectation, okay.	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13		8 9 10	thing goes for roaches. 12:15  It's a subjective infestation is 12:15 a subjective word, means different things to 12:1
7 8 9 10	the speci generaliz	If yes. However, let What we're not talkin ics of spider or the spec zation, okay. Spiders are predatory	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13	13	8 9 10 11	thing goes for roaches. 12:15  It's a subjective infestation is 12:15 a subjective word, means different things to 12:1 different people. Different homeowners have more
7 8 9 10 11	the speci generaliz	If yes. However, let What we're not talkin ies of spider or the spectation, okay.  Spiders are predatory sects; and so if a roach	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12:	13	8 9 10 11 12	thing goes for roaches. 12:15  It's a subjective infestation is 12:15 a subjective word, means different things to 12:15 different people. Different homeowners have more tolerance that other homeowners. 12:15
7 8 9 10 11 12	the speci generalize other ins nest or	If yes. However, let What we're not talkin ies of spider or the spec zation, okay.  Spiders are predatory sects; and so if a roach or their web sorry the	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12: hey might eat it. 12:13	13	8 9 10 11 12 13	thing goes for roaches. 12:15  It's a subjective infestation is 12:15 a subjective word, means different things to 12:15 different people. Different homeowners have more tolerance that other homeowners. 12:15  Q. Have you seen that people with cats are 12:15
7 8 9 10 11 12 13	the speci generalize other ins nest or Q.	If yes. However, let What we're not talkin ies of spider or the spec zation, okay.  Spiders are predatory sects; and so if a roach r their web sorry tl Okay. Now, let's talk	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12: hey might eat it. 12:13 about in the 12:13	13	8 9 10 11 12 13 14	thing goes for roaches. 12:15  It's a subjective infestation is 12:15 a subjective word, means different things to 12:15 different people. Different homeowners have more tolerance that other homeowners. 12:15  Q. Have you seen that people with cats are less likely to have rodent problems in their home? 12:16
7 8 9 10 11 12 13 14	the speci generalize other ins nest or Q. context of	If yes. However, let What we're not talkin ies of spider or the specation, okay.  Spiders are predatory sects; and so if a roach or their web sorry their web sorry their web sects; alk of testing, please.	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12: hey might eat it. 12:13 about in the 12:13	13	8 9 10 11 12 13 14 15	thing goes for roaches. 12:15  It's a subjective infestation is 12:15  a subjective word, means different things to 12:15  different people. Different homeowners have more tolerance that other homeowners. 12:15  Q. Have you seen that people with cats are 12:16  less likely to have rodent problems in their home? 12:15  MR. OSTOJIC: Object to form. 12:15
7 8 9 10 11 12 13 14 15	the speci generalize other ins nest or Q. context of A.	If yes. However, let What we're not talking ies of spider or the spectation, okay.  Spiders are predatory sects; and so if a roach or their web sorry to Okay. Now, let's talk of testing, please.  Yeah.	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12:13 hey might eat it. 12:13 about in the 12:13 12:13	13	8 9 10 11 12 13 14 15	thing goes for roaches. 12:15  It's a subjective infestation is 12:15  a subjective word, means different things to 12:15 different people. Different homeowners have more tolerance that other homeowners. 12:15 Q. Have you seen that people with cats are 12:16 less likely to have rodent problems in their home? 12:15 MR. OSTOJIC: Object to form. 12:15 BY THE WITNESS: 12:15
7 8 9 10 11 12 13 14 15 16	the speci generalize other ins nest or Q. context of A. Q.	If yes. However, let What we're not talking ies of spider or the spectation, okay.  Spiders are predatory sects; and so if a roach or their web sorry their web sorry their web sorry their testing, please.  Yeah.  Okay. Would you agr	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12: hey might eat it. 12:13 about in the 12:13 12:13 ree that it's a 12:13		8 9 10 11 12 13 14 15 16 17	thing goes for roaches. 12:15  It's a subjective infestation is 12:15  a subjective word, means different things to 12:15 different people. Different homeowners have more tolerance that other homeowners. 12:15  Q. Have you seen that people with cats are 12:15 less likely to have rodent problems in their home? 12:15  MR. OSTOJIC: Object to form. 12:15  BY THE WITNESS: 12:15  A. I have not because I don't own a cat. 12:15
7 8 9 10 11 12 13 14 15 16 17	the speci generalized other ins nest or Q. context C A. Q. confound	If yes. However, let What we're not talkin ies of spider or the spec zation, okay.  Spiders are predatory sects; and so if a roach r their web sorry ti Okay. Now, let's talk of testing, please. Yeah.  Okay. Would you agr ding variable to place if	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12: hey might eat it. 12:13 about in the 12:13 12:13 12:13 ree that it's a 12:13 insects together in a 12:	:13	8 9 10 11 12 13 14 15 16 17 18	thing goes for roaches. 12:15  It's a subjective infestation is 12:15  a subjective word, means different things to 12:15  different people. Different homeowners have more tolerance that other homeowners. 12:15  Q. Have you seen that people with cats are 12:15  MR. OSTOJIC: Object to form. 12:15  BY THE WITNESS: 12:15  A. I have not because I don't own a cat. 12:15  BY MR. KOPEL: 12:16
7 8 9 10 11 12 13 14 15 16 17	the speci generalized other ins nest or Q. context C A. Q. confound	If yes. However, let What we're not talkin ies of spider or the spec zation, okay.  Spiders are predatory sects; and so if a roach r their web sorry ti Okay. Now, let's talk of testing, please. Yeah.  Okay. Would you agr ding variable to place if	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12: hey might eat it. 12:13 about in the 12:13 12:13 ree that it's a 12:13	:13	8 9 10 11 12 13 14 15 16 17 18	thing goes for roaches. 12:15  It's a subjective infestation is 12:15  a subjective word, means different things to 12:15 different people. Different homeowners have more tolerance that other homeowners. 12:15 Q. Have you seen that people with cats are 12:15 less likely to have rodent problems in their home? 12:15 MR. OSTOJIC: Object to form. 12:15 BY THE WITNESS: 12:15 A. I have not because I don't own a cat. 12:15 BY MR. KOPEL: 12:16 Q. Would you suppose that because cats eat 12:16
7 8 9 10 11 12 13 14 15 16 17 18	the speci generalize other ins nest or Q. context of A. Q. confound chamber	If yes. However, let What we're not talkin ies of spider or the spec zation, okay.  Spiders are predatory sects; and so if a roach r their web sorry ti Okay. Now, let's talk of testing, please. Yeah.  Okay. Would you agr ding variable to place if	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12: hey might eat it. 12:13 about in the 12:13 12:13 ree that it's a 12:13 insects together in a 12: ys upon the other insect?	:13	8 9 10 11 12 13 14 15 16 17 18 19 20	thing goes for roaches. 12:15  It's a subjective infestation is 12:15  a subjective word, means different things to 12:15 different people. Different homeowners have more tolerance that other homeowners. 12:15 Q. Have you seen that people with cats are 12:15 less likely to have rodent problems in their home? 12:15 MR. OSTOJIC: Object to form. 12:15 BY THE WITNESS: 12:15 A. I have not because I don't own a cat. 12:15 BY MR. KOPEL: 12:16 Q. Would you suppose that because cats eat or harass rodents, people with cats are less likely 12:15
7 8 9 10 11 12 13 14 15 16 17 18 19 20	the speci generalize other ins nest or Q. context of A. Q. confound chamber	If yes. However, let What we're not talkin ies of spider or the spec- zation, okay.  Spiders are predatory sects; and so if a roach r their web sorry ti Okay. Now, let's talk of testing, please. Yeah.  Okay. Would you agr ding variable to place if	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12: hey might eat it. 12:13 about in the 12:13 12:13 ree that it's a 12:13 insects together in a 12: ys upon the other insect?	:13	8 9 10 11 12 13 14 15 16 17 18 19 20	thing goes for roaches. 12:15  It's a subjective infestation is 12:15  a subjective word, means different things to 12:15 different people. Different homeowners have more tolerance that other homeowners. 12:15 Q. Have you seen that people with cats are 12:15 less likely to have rodent problems in their home? 12:15 MR. OSTOJIC: Object to form. 12:15 BY THE WITNESS: 12:15 A. I have not because I don't own a cat. 12:15 BY MR. KOPEL: 12:16 Q. Would you suppose that because cats eat 12:16
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	the speci generalize other ins nest or Q. context c A. Q. confound chamber MR. BY THE	If yes. However, let What we're not talkin ies of spider or the specation, okay.  Spiders are predatory sects; and so if a roach or their web sorry th Okay. Now, let's talk of testing, please.  Yeah.  Okay. Would you agr ding variable to place if where one insect prey OSTOJIC: Object to	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12: hey might eat it. 12:13 about in the 12:13 12:13 12:13 ree that it's a 12:13 insects together in a 12: ys upon the other insect? form. 12:14 12:14	:13	8 9 10 11 12 13 14 15 16 17 18 19 20	thing goes for roaches. 12:15  It's a subjective infestation is 12:15  a subjective word, means different things to 12:15 different people. Different homeowners have more tolerance that other homeowners. 12:15  Q. Have you seen that people with cats are 12:16 less likely to have rodent problems in their home? 12:15  MR. OSTOJIC: Object to form. 12:15  A. I have not because I don't own a cat. 12:15  BY MR. KOPEL: 12:16 Q. Would you suppose that because cats eat 12: or harass rodents, people with cats are less likely 12:16 to have rodent problems in their homes? 12:16
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	the speci generalized other ins nest or Q. context of A. Q. confound chamber MR. BY THE	If yes. However, let What we're not talking its of spider or the speciation, okay.  Spiders are predatory sects; and so if a roach or their web sorry to Okay. Now, let's talk of testing, please.  Yeah.  Okay. Would you agriding variable to place in where one insect prey to OSTOJIC: Object to 3 WITNESS:	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12: hey might eat it. 12:13 about in the 12:13 12:13 12:13 ree that it's a 12:13 insects together in a 12: ys upon the other insect? form. 12:14 12:14	:13	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	thing goes for roaches. 12:15  It's a subjective infestation is 12:15  a subjective word, means different things to 12:15 different people. Different homeowners have more tolerance that other homeowners. 12:15 Q. Have you seen that people with cats are 12:16 less likely to have rodent problems in their home? 12:15 MR. OSTOJIC: Object to form. 12:15 BY THE WITNESS: 12:15 A. I have not because I don't own a cat. 12:15 BY MR. KOPEL: 12:16 Q. Would you suppose that because cats eat 12: 10 or harass rodents, people with cats are less likely 12:15 to have rodent problems in their homes? 12:15
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	the speci generalized other ins nest or Q. context of A. Q. confound chamber MR. BY THE A.	If yes. However, let What we're not talkin ies of spider or the spectation, okay.  Spiders are predatory sects; and so if a roach or their web sorry ti Okay. Now, let's talk of testing, please. Yeah. Okay. Would you agr ding variable to place is where one insect prey OSTOJIC: Object to WITNESS: I would not advise tha KOPEL:	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12: hey might eat it. 12:13 about in the 12:13 12:13 12:13 ree that it's a 12:13 insects together in a 12: ys upon the other insect? of form. 12:14 12:14 at. 12:14	:13 12:13	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	thing goes for roaches.  It's a subjective infestation is 12:15  a subjective word, means different things to 12:15  different people. Different homeowners have more tolerance that other homeowners.  Q. Have you seen that people with cats are 12:15  Q. Have you seen that people with cats are 12:15  MR. OSTOJIC: Object to form. 12:15  BY THE WITNESS: 12:15  A. I have not because I don't own a cat. 12:15  BY MR. KOPEL: 12:16  Q. Would you suppose that because cats eat 12: or harass rodents, people with cats are less likely 12: to have rodent problems in their homes? 12:16  MR. OSTOJIC: Object to form, but go ahead. 1  BY THE WITNESS: 12:16
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	the speci generalized other ins nest or Q. context of A. Q. confound chamber MR. BY THE A.	If yes. However, let What we're not talkin its of spider or the spectation, okay.  Spiders are predatory sects; and so if a roach or their web sorry to Okay. Now, let's talk of testing, please.  Yeah.  Okay. Would you agred ing variable to place if where one insect prey OSTOJIC: Object to WITNESS: I would not advise that KOPEL: Would you agree that	t me elaborate. 12:13 ng about here is 12:13 cies of this is a 12:13 12:13 y. They eat 12:13 happens upon their 12: hey might eat it. 12:13 about in the 12:13 12:13 12:13 ree that it's a 12:13 insects together in a 12: ys upon the other insect? of form. 12:14 12:14 12:14	:13 12:13	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	thing goes for roaches.  It's a subjective infestation is a 12:15  a subjective word, means different things to different people. Different homeowners have more tolerance that other homeowners.  Q. Have you seen that people with cats are 12:15  MR. OSTOJIC: Object to form.  BY THE WITNESS:  A. I have not because I don't own a cat. 12:15  Q. Would you suppose that because cats eat 12:16  Q. Would you suppose that because cats eat 12:16  or harass rodents, people with cats are less likely 12:16  MR. OSTOJIC: Object to form, but go ahead.  BY THE WITNESS: 12:16  A. I have not because I don't own a cat. 12:16  I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:16  A. I have not because I don't own a cat. 12:15  A. I have not because I don't own a cat. 12:15  BY THE WITNESS: 12:16

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	BY MR. KOPEL:	12:16			Do you think that that was the 12:	18
2	C		12:16		2 purpose of this test? 12:18	
	with the Bates number oh, ex		ou 12:1		<del>-</del>	2:18
	have different Bates numbers th		12:16	4	4 room when they designed the experiment.	12:18
5	and to control of the total of	ne test. 12:16		1	<ol> <li>Q. Okay. Can you turn to back to the</li> </ol>	12:18
6	cpieris.	12:16		(	The state of the s	2:18
7	7	12:16		1 '	Okay. Do you see the sentence where	12:18
8			2:16		8 it says, "This is to measure the efficacy of high-	12:18
9	(y,	12:17		9	9 frequency sound as a pest management tool"?	12:1
10	= + ) • = = = mare mere			10	O A. Wait a minute. I'm just now getting to	12:19
	bottom of the chart it says, "Not		12:17	11	I it. 12:19	
	bullet points here?	12:17		12	MR. OSTOJIC: What page is that?	12:19
13	A. Yes.	12:17		13		12:19
14	C		12:17	14	4 this test. 12:19	
	these spiders were eating roache		12:17	15	5 BY THE WITNESS: 12:	19
16	A. "Each spider chamber v		12:17	16	- Journal and Journal and Co	12:19
	recently dead roaches as food fo	<del>-</del>	12:17	1	7 "Object." 12:19	
	basis."	12:17			8 BY MR. KOPEL: 12:19	
19	I see that.	12:17		19	( F	
20	, , , , , , , , , , , , , , , , , , , ,			20	and the second of the chickey of high	12:19
	around in the same space as ro			1	frequency sound as a pest management tool."	12:19
	likely that the spiders would eat		12:17	22	12.17	
23	MR. OSTOJIC: Object to f	***	12:17		C. Sway. So Hold protey cloud of what the	12:19
	hypothetical.	12:17		24	d object of this test is? 12:19	
25	But go ahead.	12:17	D 106	25	12.17	
	······································		Page 106		104 100	Page 108
1	BY THE WITNESS:	12:17	7	1	Q. Okay. If you were designing a test with 12:19	
2	A. It could but not	12:17		2	that object, would you put ants and roaches in the 12:1	9
3	BY MR. KOPEL:	12:17			same chamber? 12:19	
4	Q. That wouldn't concern y	ou in the context	12:17	4	A. You know, now that I think about it, I 12:19	
	of a test?	12:17		5	might, because in a pest in a house if there is a 12:19	
6	MR. OSTOЛС: Object to for	orm, foundation.	12:17		infestation of all three of these things, a large 12:19	
7	But go ahead.	12:17		7	enough infestation to be concerned, you might want to I	2:19
	BY THE WITNESS:	12:17	7	8	do that. 12:19	
9	A. As I said, I would not he	ave designed an	12:17	9	In my opinion it wouldn't be the 12:19	
	experiment with and put spide		12:17	10	only thing I'd do, but that seems to be a valid 12:19	
1	ants in the chamber or the testing	g arena at the same	12:17	11	question since these pests do occur in the can 12:20	
	time.	12:18		12	occur I should say in the same room at the same 12:2	20
3	BY MR. KOPEL:	12:18		13	time. 12:20	
4	Q. Okay. Would you have		12:18	14	BY MR. KOPEL: 12:20	
	ants in the same arena at the sam	e time if you had	12:18	15	Q. And if tests if tests are used that 12:20	
	designed an experiment?	12:18		16	use multiple pests in the same chamber at the same 12:	20
7	A. You know, let me let		:18		time, can the data from those tests necessarily be 12:20	•
8	It really depends on the	e purpose of 12:1	.8		reliable to say what would have occurred had they not 12	::20
9	the experiment.	12:18			done so? 12:20	
	You could set out a hyp		2:18	20	MR. OSTOJIC: Object to form, foundation. 12:2	0
	the purpose of experiment being		12:18	21	BY THE WITNESS: 12:20	
		thes are put in the	12:18	22	A. Had they not done what? 12:20	
1 2	what happens when ants and roac	-				
1 2 3	chamber together. You'd have to	-	12:18	23	BY MR. KOPEL: 12:20	
2 3 4		-	12:18	23 24	BY MR. KOPEL: 12:20  Q. Put multiple pests in the same chambers 12:20	
1 2 3	chamber together. You'd have to	do it that way in 12:18	12:18 age 107	24		

1	The state of the s				
^	MR. OSTOЛС: Same objections.	12:20	1	can affect each other's movements?	12:23
	BY THE WITNESS:	12:20	2	A. They might.	12:23
3	A. I've lost the first part of your	12:20	3	,	-
	question. 12:20		4	was only effective as to roaches or an	its, but so 12:23
5	MR. KOPEL: Sure.	12:20	5	under those circumstances wouldn't it	t be possible 12:23
	BY MR. KOPEL:	12:20	6	that as a secondary result the one that	it is not 12:23
7	Q. Let's say a home has an infestation		7	effective for would also exhibit move	
8	,	or 12:20	8	MR. OSTOJIC: Object. Form, f	Coundation, 12:23
	roaches, okay? 12:		9	incomplete hypothetical.	12;23
10	A. Uh-huh. 12:2	•	10	Go ahead.	12:23
11	Q. Let's say you take a test where ants		11	BY THE WITNESS:	12:23
	roaches are tested in the same chamber at th		12	<ul> <li>A. Could you repeat that long q</li> </ul>	uestion? 12:23
	time, would the data from that test necessari	•	13	MR. KOPEL: Sure.	12:23
	translate to the case of the home that only ha	is an 12:21	14	BY MR. KOPEL:	
	ant infestation?	21	15	Q. Let's say let's say that ultra	sonic 12:23
16	MR. OSTOJIC: Object to incomplete	12:21	1	technology were effective to affect the	e movement of 12:24
	**	2:21	17	roaches and not ants, okay?	12:24
18	But go ahead and answer.	12:21	18	A. Okay. Hypothetical.	12:24
	BY THE WITNESS:	12:21	19	Q. Hypothetical, right.	12:24
20	A. There are other factors involved. It		20	Under those circumstances,	•
	would not be a direct one-to-one one-to-on		21	tested roaches and ants together in the	same chamber, 12:24
	versus what you're observing in the house.	12:21	22	even under this hypothetical where the	e technology is 12:24
23	If you got just ants in the house	12:21		not effective towards the ants, you still	ll might see 12:24
	and you've got data that's based on roaches a	nd ants, 12:21		some increased movement on the part	
25	it's it's not a direct comparison, no.	12:21	25	to its effectiveness on the roaches; we	
		Page 110		- 11 W.L.	Page 11
	BY MR. KOPEL: 12:21		1	correct?	12:24
2	Q. So in this test they tested the roaches 1:	2:21	2	A. You might,	12:24
			-		
	and ants in the same chamber at the same time;	12:21	3	MR. OSTOЛС: Object to form, t	
4	correct?		3		
<b>4</b> 5	correct?  A. Well, it appears so, but let me read the		3	MR. OSTOЛС: Object to form, i	foundation, 12:24
4 5 6	A. Well, it appears so, but let me read the protocol to make sure that I'm 12:	2:22	3 4 5	MR. OSTOJIC: Object to form, i	foundation. 12:24 12:24
4 5 6 7	A. Well, it appears so, but let me read the protocol to make sure that I'm 12::  Q. That's okay. If it's helpful you can 12	2:22	3 4 5 6 7	MR. OSTOJIC: Object to form, to Incomplete hypothetical.  But go ahead, BY THE WITNESS:  A. You might.	foundation, 12:24 12:24 12:24
4 5 6 7 8	A. Well, it appears so, but let me read the protocol to make sure that I'm 12::  Q. That's okay. If it's helpful you can 12 take a look at Page 3 12:22	2:22	3 4 5 6 7 8	MR. OSTOJIC: Object to form, to Incomplete hypothetical.  But go ahead. BY THE WITNESS:  A. You might. BY MR. KOPEL:	foundation. 12:24 12:24 12:24 12:24 12:24 12:24
4 5 6 7 8	A. Well, it appears so, but let me read the protocol to make sure that I'm 12::  Q. That's okay. If it's helpful you can 12 take a look at Page 3 12:22  A. That would help. 12:22	12:22 22 :22	3 4 5 6 7 8 9	MR. OSTOJIC: Object to form, to Incomplete hypothetical. But go ahead. BY THE WITNESS: A. You might. BY MR. KOPEL: Q. Okay. So does that concern you	foundation. 12:24 12:24 12:24 12:24 12:24 12:24 you in terms 12:24
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4 5 6 7 8 9 10 11 2 3 4 5 6 7 8	A. Well, it appears so, but let me read the protocol to make sure that I'm 12::  Q. That's okay. If it's helpful you can 12 take a look at Page 3 12:22  A. That would help. 12:22  Q the second paragraph, the last 12: sentence of the second paragraph. 12  A. "In order to prevent spiders in order 1 to prevent spiders cat ants and roaches, the testing will be conducted separately, spiders in one testing" yes, you are right. 12:22  Q. Okay. Do you feel comfortable using the data from the roaches and the ants portion of this study in rendering an opinion on a home which missing the conduction of the study in rendering an opinion on a home which missing the conduction of the protocol of the study in rendering an opinion on a home which missing the conduction of the protocol of the study in rendering an opinion on a home which missing the conduction of the protocol of the	12:22 22 :22 22 :22 2:22 12:22 12:22 12:22	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	MR. OSTOJIC: Object to form, to Incomplete hypothetical.  But go ahead. BY THE WITNESS:  A. You might. BY MR. KOPEL: Q. Okay. So does that concern yof extending the data from this test to where only roaches were present or or present?  A. Again, I say not really. BY MR. KOPEL: Q. What species were used in this A. They do not say. Q. Is it important to know what a there are they use?	foundation. 12:24 12:24 12:24 12:24 12:24 12:24 20 in terms 12:24 20 iy ants were 12:24 12:24 12:24 12:24 12:24 12:24 12:24 12:24
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4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Well, it appears so, but let me read the protocol to make sure that I'm 12::  Q. That's okay. If it's helpful you can 12 take a look at Page 3 12:22  A. That would help. 12:22  Q the second paragraph, the last 12: sentence of the second paragraph, the last 12: sentence of the second paragraph. 12: 4. "In order to prevent spiders in order 1 to prevent spiders eat ants and roaches, the testing will be conducted separately, spiders in one testing" yes, you are right. 12:22  Q. Okay. Do you feel comfortable using the data from the roaches and the ants portion of this study in rendering an opinion on a home which mi only have ants or only have roaches? 1  A. Yes, I do. 12:22	12:22 22 :22 :22 :22 2:22 12:22 12:22 12:22 12:22 ght 12:22	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	MR. OSTOJIC: Object to form, to Incomplete hypothetical.  But go ahead.  BY THE WITNESS:  A. You might.  BY MR. KOPEL:  Q. Okay. So does that concern you of extending the data from this test to where only roaches were present or or present?  A. Again, I say not really.  BY MR. KOPEL:  Q. What species were used in this A. They do not say.  Q. Is it important to know what sthere are they use?  A. It would be helpful.  Q. Is it important?	foundation. 12:24 12:24 12:24 12:24 12:24 12:24 20u in terms 12:24 a situation 12:24 12:24 12:24 12:24 12:24 12:24 12:24 12:25 12:25 12:25
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4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Well, it appears so, but let me read the protocol to make sure that I'm 12::  Q. That's okay. If it's helpful you can 12 take a look at Page 3 12:22  A. That would help. 12:22  Q the second paragraph, the last 12: sentence of the second paragraph. 12  A. "In order to prevent spiders in order 1 to prevent spiders cat ants and roaches, the testing will be conducted separately, spiders in one testing" yes, you are right. 12:22  Q. Okay. Do you feel comfortable using the data from the roaches and the ants portion of this study in rendering an opinion on a home which mi only have ants or only have roaches? 1  A. Yes, I do. 12:22  Q. Why? 12:22  A. Because because I'm presented with	12:22 22 22 22 2:22 2:22 12:22 12:22 12:22 ght 12:22 2:22	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	MR. OSTOJIC: Object to form, to Incomplete hypothetical.  But go ahead.  BY THE WITNESS:  A. You might.  BY MR. KOPEL:  Q. Okay. So does that concern you of extending the data from this test to where only roaches were present or or present?  A. Again, I say not really.  BY MR. KOPEL:  Q. What species were used in this A. They do not say.  Q. Is it important to know what sthere are they use?  A. It would be helpful.  Q. Is it important?	foundation. 12:24 12:24 12:24 12:24 12:24 12:24 20u in terms 12:24 a situation 12:24 12:24 12:24 12:24 12:24 12:24 12:24 12:25 12:25 12:25
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 11 22 23	A. Well, it appears so, but let me read the protocol to make sure that I'm 12::  Q. That's okay. If it's helpful you can 12 take a look at Page 3 12:22  A. That would help. 12:22  Q the second paragraph, the last 12: sentence of the second paragraph. 12 to prevent spiders cat ants and roaches, the testing will be conducted separately, spiders in one testing" yes, you are right. 12:22  Q. Okay. Do you feel comfortable using the data from the roaches and the ants portion of this study in rendering an opinion on a home which mi only have ants or only have roaches? 1  A. Yes, I do. 12:22  Q. Why? 12:22  A. Because because I'm presented with data that show a difference in in results when the	12:22 22 22 22 2:22 2:22 12:22 12:22 12:22 ght 12:22 2:22	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. OSTOJIC: Object to form, to incomplete hypothetical.  But go ahead.  BY THE WITNESS:  A. You might.  BY MR. KOPEL:  Q. Okay. So does that concern you of extending the data from this test to where only roaches were present or or present?  A. Again, I say not really.  BY MR. KOPEL:  Q. What species were used in this A. They do not say.  Q. Is it important to know what a sthere are they use?  A. It would be helpful.  Q. Is it important?  MR. OSTOJIC: Object to asked a	foundation. 12:24 12:24 12:24 12:24 12:24 12:24 20u in terms 12:24 20u situation 12:24 20u a situation 12:24 20u ants were 12:24 12:24 12:24 12:24 12:24 12:25
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Well, it appears so, but let me read the protocol to make sure that I'm 12::  Q. That's okay. If it's helpful you can 12 take a look at Page 3 12:22  A. That would help. 12:22  Q the second paragraph, the last 12: sentence of the second paragraph. 12  A. "In order to prevent spiders in order 1 to prevent spiders cat ants and roaches, the testing will be conducted separately, spiders in one testing" yes, you are right. 12:22  Q. Okay. Do you feel comfortable using the data from the roaches and the ants portion of this study in rendering an opinion on a home which mi only have ants or only have roaches? 1  A. Yes, I do. 12:22  Q. Why? 12:22  A. Because because I'm presented with	12:22 22 22 22 2:22 2:22 12:22 12:22 12:22 ght 12:22 2:22	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MR. OSTOJIC: Object to form, to Incomplete hypothetical.  But go ahead. BY THE WITNESS:  A. You might. BY MR. KOPEL: Q. Okay. So does that concern yof extending the data from this test to where only roaches were present or or present?  A. Again, I say not really. BY MR. KOPEL: Q. What species were used in this A. They do not say. Q. Is it important to know what sethere are they use?  A. It would be helpful. Q. Is it important? MR. OSTOJIC: Object to asked a But go ahead.	foundation. 12:24 12:24 12:24 12:24 12:24 12:24 20:24 12:24 20:24 20:24 20:24 20:24 20:24 20:24 20:25 12:25 12:25 12:25 20:25

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1	BY MR. KOPEL: 12:25	1	A. The word control, again, can be defined 12:27
2	Q. Okay. Do you know if they used the 12:25	2	2 in different ways, and you could make the case here 12:27
3	species of ants that are that are present in the 12:25	3	3 that the control or the treatments between days, 24 12:27
4	United States? 12:25	4	4 hours, 48 hours, 72 hours, et cetera, those are 12:27
5	A. I do not. 12;25	5	5 you could make the case that those are independent 12:27
6	Q. Do you know if they use a species of 12:25	6	6 observations and, therefore, one controls for the 12:27
7	roaches that are present in the United States? 12:25	7	7 other, 12:28
8	A. Based on the picture that is provided 12:25	8	8 Q. Do you know what would have occurred had 12:28
9	and this is the only evidence I have to go by, 12:25	9	9 they run this testing for seven days without the 12:28
10	okay that picture resembles cockroaches that are 12:2	5 10	0 repellers on? 12:28
11	present in the United States. 12:25	1.	1 MR. OSTOJIC: Object to form. 12:28
12	Q. Are you referring to the hand drawing? 12:25	12	2 BY THE WITNESS: 12:28
13	A. No, Page 3 of 19. There's a - 12:25	13	A. Do I know what would happen if they 12:28
14	Q. Is that a real picture, or is that a 12:25	14	4 I'm trying to restate it in my mind. 12:28
15	depiction? 12:26		5 BY MR. KOPEL: 12:28
16	A. I I don't know, but if you you 12:26	10	6 Q. Well, maybe I can maybe I can rephrase 12:28
	know, I'm what was the original question? Do I 12:2		7 the question. 12:28
	know? 12:26	18	
19	Q. The question is: Do you know whether 12:26	ŀ	•
•	they use a species of spiders that are present in the 12:26	20	The state of the s
1	United States? 12:26		1 spiders have been had they run this same testing but 12:28
22	A. I do not. 12:26	- 1	with no repeller present or turned on? 12:28
23	Q. Do you know if they use a species of 12:26	23	• •
	roaches that are present in the United States? 12:26		4 BY THE WITNESS: 12:28
25	A. I do not. 12:26	2.5	
2.5	Page 11		Page 116
1	Q. Is it possible that a species of ants, 12:26		1 fed, it's likely that they would have stayed in the 12:28
	spiders, or roaches that live across the world might 12:2		2 same place that they were released. 12:28
1	react differently to stimuli than species that live 12:26		3 BY MR. KOPEL: 12:28
ŀ	in the U.S.? 12:26		
5	MR. OSTOJIC: Object to form. 12:26		
6	MR. OSTOJIC. Objectio form. 12.20		
	Go sheed 12:26		5 you tell me for a fact that the distribution would 12:29
	Go ahead. 12:26	(	6 have been any different had these repellers been not 12:29
7	BY THE WITNESS: 12:26	7	6 have been any different had these repellers been not 12:29 7 present or not turned on? 12:29
7 8	BY THE WITNESS: 12:26 A. In my opinion that's a small 12:26	7	6 have been any different had these repellers been not 12:29 7 present or not turned on? 12:29 8 MR. OSTOJIC: Wait. Object to form, 12:29
7 8 9	BY THE WITNESS: 12:26 A. In my opinion that's a small 12:26 insignificant probability. 12:26	5	6 have been any different had these repellers been not 12:29 7 present or not turned on? 12:29 8 MR. OSTOJIC: Wait. Object to form, 12:29 9 foundation. 12:29
7 8 9 10	BY THE WITNESS: 12:26 A. In my opinion that's a small 12:26 insignificant probability. 12:26 BY MR. KOPEL: 12:26	10	6 have been any different had these repellers been not 12:29 7 present or not turned on? 12:29 8 MR. OSTOJIC: Wait. Object to form, 12:29 9 foundation. 12:29 0 Would you repeat that? 12:29
7 8 9 10	BY THE WITNESS: 12:26 A. In my opinion that's a small 12:26 insignificant probability. 12:26 BY MR. KOPEL: 12:26 Q. So it's possible, but you think it's 12:26	10	6 have been any different had these repellers been not 12:29 7 present or not turned on? 12:29 8 MR. OSTOJIC: Wait. Object to form, 12:29 9 foundation. 12:29 0 Would you repeat that? 12:29 1 (WHEREUPON, the record was 12:29
7 8 9 10 11 12	BY THE WITNESS: 12:26 A. In my opinion that's a small 12:26 insignificant probability. 12:26 BY MR. KOPEL: 12:26 Q. So it's possible, but you think it's 12:26 unlikely; is that a fair — is that accurate? 12:26	6 5 8 9 10 11 12	6 have been any different had these repellers been not 12:29 7 present or not turned on? 12:29 8 MR. OSTOJIC: Wait. Object to form, 12:29 9 foundation. 12:29 0 Would you repeat that? 12:29 1 (WHEREUPON, the record was 12:29 2 read by the reporter.)
7 8 9 10 11 12 13	BY THE WITNESS: 12:26  A. In my opinion that's a small 12:26 insignificant probability. 12:26  BY MR. KOPEL: 12:26  Q. So it's possible, but you think it's 12:26 unlikely; is that a fair — is that accurate? 12:26  MR. OSTOJIC: Object to form. 12:26	6 3 8 9 10 11 12 13	6 have been any different had these repellers been not 12:29 7 present or not turned on? 12:29 8 MR. OSTOJIC: Wait. Object to form, 12:29 9 foundation. 12:29 0 Would you repeat that? 12:29 1 (WHEREUPON, the record was 12:29 2 read by the reporter.) 3 THE WITNESS: I'm I'm still not quite 12:29
7 8 9 10 11 12 13 14	BY THE WITNESS: 12:26  A. In my opinion that's a small 12:26 insignificant probability. 12:26  BY MR. KOPEL: 12:26  Q. So it's possible, but you think it's 12:26 unlikely; is that a fair — is that accurate? 12:26  MR. OSTOJIC: Object to form. 12:26  BY THE WITNESS: 12:26	10 11 12 13 14	6 have been any different had these repellers been not 12:29 7 present or not turned on? 12:29 8 MR. OSTOJIC: Wait. Object to form, 12:29 9 foundation. 12:29 0 Would you repeat that? 12:29 1 (WHEREUPON, the record was 12:29 2 read by the reporter.) 3 THE WITNESS: I'm I'm still not quite 12:29 4 understanding it. Maybe you can rephrase it. 12:29
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	1: 10	
	applied? 12:30	1 BY MR. KOPEL: 12:33
2	MR. OSTOJIC: Object to form. 12:30	2 Q. And I understand what you expect, but do 12:33
3	Go ahead. 12:30	3 you know is the question? 12:33
	BY THE WITNESS: 12:30	4 MR. OSTOJIC: Object to form. Asked and 12:33
5	A. Typically the experiments that that we 12:30	5 answered, 12:33
	use for insecticide testing involves an untreated 12:30	6 But go ahead. 12:33
	control for the same amount of time as you were 12:30	
	treating as the treatment was applied. 12:30	8 A. Preliminary testing was not done for 7 12:33
9	So everything is equal, identical, 12:30	9 days, so I do not have data for 5 more days than 12:33
	except for the one variable you're trying to discern, 12:31	10 what's provided here. 12:33
	discriminate with, which would be the treatment. 12:31	
12	Insecticide, yes; insecticide, no. 12:31	12 Q. Have you ever relied in the course of 12:33
13	Q. And why was that the case? Why was that 12:31 important?	*
15	important? 12:31  A. That was important because you wanted to 12:31	14 testing that used a pretest as a control where the 12:33 15 pretest was less than a third of the testing length? 12:33
	*	
	be able to statistically determine whether there was 12:31 a difference between the result in the control plot 12:31	16 A. That does not cause me concern. I can't 12:34  17 remember or cite a particular experiment we ran that 12:34
	which had no insecticide versus the treatment plot. 12:31	•
19	Q. And that was not done in this test; 12:31	19 once the distribution, whether it's on Day 1, 2, 3, 12:34
	correct? 12:31	20 4, 5, 6, 7, once the distribution of insects equals 12:34
21	MR. OSTOЛС: Object to form. 12:31	21 out between the two chambers, then you've got what 12:34
	BY THE WITNESS: 12:31	22 you want, you're control is is working. 12:34
23	A. The experiments were different, but 12:31	23 Q. Okay. And would you agree that it's 12:34
ł	they they had a a chamber which had did not 12:31	
	have a repeller, and so it was not done. I you 12:31	25 world would be to run the control for the same amount 12:34
	Page 118	
1	have to in this type of experiment what's 12:32	I of time as the treatment? 12:34
2	important is that in is that all conditions are 12:32	2 MR. OSTOJIC: Object to form. 12:34
1	important is that in — is that all conditions are 12:32 equal, identical in both chambers, and the fact that 12:32	2 MR. OSTOJIC: Object to form. 12:34 3 BY THE WITNESS: 12:34
3		
3 4	equal, identical in both chambers, and the fact that 12:32	3 BY THE WITNESS: 12:34
3 4 5	equal, identical in both chambers, and the fact that 12:32 in pretesting you again, going back to the 12:32	3 BY THE WITNESS: 12:34 4 A. I would not agree it's generally 12:34
3 4 5 6 7	equal, identical in both chambers, and the fact that 12:32 in pretesting you again, going back to the 12:32 statistics, you want to make sure that there's no 12:32 bias in those two chambers. 12:32  And so you the purpose of the 12:32	3 BY THE WITNESS: 12:34 4 A. I would not agree it's generally 12:34 5 accepted. It would be great if you had the time and 12:35 6 the resources to do it. It would be nice. 12:35 7 BY MR. KOPEL: 12:35
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	· · · · · · · · · · · · · · · · · · ·
1 MR. OSTOJIC: He's not there. 12:36	1 Okay. Let me just SGS 2012; 12:38
2 THE WITNESS: Like I said before, my I'm 12:36	2 right, that's my No. 3? 12:38
3 anticipating you asking question that I could most 12:36	3 Okay. Roaches and ants. All right. 12:38
4 easily answer by looking at my the Reference 10 12:36	4 For I'm looking different. Something is wrong. 12:38
5 that I cited before, but if you don't want me to, I 12:36	5 Oh, there's the 713.
6 won't. 12:36	6 Okay. For roaches the chi-square 12:38
7 MR. OSTOJIC: No, no, no. 12:36	7 p-value was 0.1818, rounded up, and so they were 12:3\$
8 MR. KOPEL: You can look at whatever you 12:36	8 statistically the same in each – in each chamber. 12:38
9 want. That's fine. 12:36	9 Q. For Day Negative 2? 12:38
10 MR. OSTOЛС: I wanted you guys to be on the 12:36	10 A. Well, yes, I called it Day 1 in my table; 12:38
11 same page because he asked you to go to the roaches 12:36	11 but, yes, 7 and 13. The number 7 and 13 12:38
12 and ants. 12:36	12 Q. Yes. 12:39
13 MR. KOPEL: That's I'm not giving you a 12:36	13 A are not different at the .18 level. 12:39
14 memory test right now. If it's helpful for you to 12:36	14 Q. Given that the first day there was a 30 12:39
15 look at something else, you're welcome to do so. 12:36	15 percent discrepancy, do you have any reason to 12:39
16 Okay? 12:36	16 believe that on the third day there wouldn't have 12:39
17 THE WITNESS: Well, I'll wait until you ask 12:36	17 been a 40 or 50 percent discrepancy? 12:39
18 the question. 12:36	18 MR. OSTOJIC: Object to form, foundation. 12:39
19 MR. KOPEL: Yeah, listen to the question. 12:36	19 Mischaracterize the evidence, but go ahead. 12:39
20 BY MR. KOPEL: 12:36	20 THE WITNESS: Do I have any you got to 12:39
21 O. Okay. On Day Negative 2 in this test 12:36	21 repeat it. 12:39
22 there were 7 roaches in Chamber A and 13 roaches in 12:36	22 MR. KOPEL: Sure. 12:39
23 Chamber B. 12:37	23 BY MR. KOPEL: 12:39
	24 Q. Given that that the first day of 12:39
	25 preliminary testing there was a 30 percent 12:39
25 A. Talking just roaches? 12:37 Page 122	Page 124
1 Q. Just roaches. 12:37	1 discrepancy, do you have any reason to believe that 12:39
2 A. No, I see 7 and 13. Is that what you 12:37	2 on had the preliminary testing done on for a third 12:39
3 said? 12:37	3 day, that there would not have been a 40 or 50 12:39
4 Q. I believe so. 12:37	4 percent discrepancy? 12:39
5 A. Yes, that's what I see. 12:37	5 MR. OSTOJIC: Object to form, foundation, and 12:39
6 Q. That's 30 percent more roaches in 12:37	6 also misstates the evidence. 12:39
7 Chamber B on Day Negative 2 than there were on I'm 12:37	7 But go ahead. 12:39
8 sorry. 12:37	8 BY THE WITNESS: 12:39
9 That's 30 percent more roaches in 12:37	9 A. Yeah, it's a hypothetical, and I don't 12:39
10 Chamber B than Chamber A on Day Negative 2; correct? 12:37	10 I don't think it would be any different. 12:39
11 A. If that's your arithmetic, but the 12:37	11 MR, OSTOJIC: Any different than what it was? 12:40
12 arithmetic that's why I was going to this this 12:37	12 BY THE WITNESS: 12:40
13 document because the just citing those numbers and 12:37	13 A. Yes. Meaning that the chambers were 12:40
14 30 percent, we don't know whether that's a 12:37	14 were statistically the same. 12:40
15 significant difference or not. 12:37	15 If you carried pretesting after Day 12:40
16 I ran the chi-square test to 12:37	16 3, I expect that they would be statistically the 12:40
17 determine whether that was equal whether those 12:37	17 same. 12:40
18 numbers were statistically different or not. 12:37	18 BY MR. KOPEL: 12:40
19 Q. Now, your chi-square test took both 12:37	19 Q. Are the posttesting, the two days of 12:40
20 both days of pretesting into consideration; correct? 12:37	20 posttesting here, are they relevant? 12:40
21 A. It considered them independently, but 12:37	21 A. Certainly. 12;40
22 not together. 12:37	22 Q. Now, I know that I believe you 12:40
23 Q. Okay. Was that a statistically 12:37	23 testified earlier that you did not believe that 12:40
24 significant difference? 12:38	24 this this test had been replicated; correct? 12:40
25 A. I'd have to look. 12:38	25 A. Not yes, not in the common way that 12:40
Page 123	Page 125

1			
	people talk about replications. 12:40	1	
2	Q. Given that you don't know the species of 12:40	2	is: Have you seen it before? 01:36
3	tests used, would you be able to replicate this test 12:40	3	A. Well, I don't know because it's got a 01:36
4	if you wanted to? 12:41	4	different name than what I've got on my I've 01:36
5	MR. OSTOЛС: Object to form, foundation. 12:41	5	got it has Intertek. 01:36
6	But go ahead. 12:41	6	Okay. 2016. I've got let me 01:36
7	BY THE WITNESS: 12:41	7	look at the numbers. GZU dash yes. 01:36
8	A. It would be it would be coincidence I 12:41	8	Q. Okay. What is this? 01:36
9	guess. It would be I certainly can test roaches, 12:41	9	A. It's a test report. The applicant was 01:36
	I can test ants, and I can test spiders. 12:41	10	Intellitec International, product Bell + Howell 01:36
11	Whether they're exactly the same 12:41	11	ultrasonic repeller. It was tested from April 7 to 01:36
12	species, we don't know since they since they 12:41	12	April 18, 2016 on ants, spiders, and roaches in 01:36
	didn't say. 12:41		Dongguan, China. 01:36
	BY MR. KOPEL: 12:41	14	
15			
	about the scientific concept of replication, would be 12:41	16	
	to use the same species; correct? 12:41	17	
17 18		18	
	didentical, yes, replicates should be identical. 12:41	19	
			conduct this test? 01:37
20 21	C	21	
	pest repeller used here, would that also prevent you 12:41		on the report, leads me to believe they're qualified. 01:37
	from replicating this test if you wanted to do so? 12:41		
23	•	23	· · · · · · · · · · · · · · · · · · ·
24 	3 2		someone's name is on it, that means they're 01:37
25	<ul> <li>Bell + Howell ultrasonic repeller, and your question 12:41</li> <li>Page 126</li> </ul>	25	qualified? 01:37 Page I
1	was does Bell + Howell repellers repel roaches and 12:41	1	A. No. 01:37
2	ants, not even asking the question about models, 12:41	2	Q. Okay. So do you know if Leo Lin and Sam 01:37
3	you're not saying do they differ, you're just asking 12:42	3	Lin are qualified? 01:37
4	does a Bell + Howell repeller repel roaches and ants, 12:42	4	A. Not specifically, no. 01:37
5	so I could do that. 12:42	5	Q. Do you know which model the pest repeller 01:37
6	MR. KOPEL: All right. Can we take can we 12:42	6	was used in this test? 01:37
7	take a five-minute break. 12:42	7	A. Let's see if I wrote it there was one 01:37
8	THE VIDEOGRAPHER: The time is 12:44. 12:42	8	that I was able to determine the model number from 01:38
9		9	the photograph. Let me see if that was this one. 01:38
10		10	<del>"</del>
10			The picture is not clear enough without enhancement 01:38
11	was face,		to see what it was. 01:38
	THE VIDEOGRAPHER: The time is now 01:35	1.7	
12			
12 13	3 approximately 1:37 p.m. 01:35	13	Q. Do you know what the size of the speaker 01:38
12 13 14	3 approximately 1:37 p.m. 01:35 4 This the beginning of Media 3. 01:35	13 14	Q. Do you know what the size of the speaker 01:38 in this model tested was? 01:38
12 13 14 15	3 approximately 1:37 p.m. 01:35 4 This the beginning of Media 3. 01:35 5 We're back on the record. 01:35	13 14 15	Q. Do you know what the size of the speaker 01:38 in this model tested was? 01:38  A. No. 01:38
12 13 14 15	3 approximately 1:37 p.m. 01:35 4 This the beginning of Media 3. 01:35 5 We're back on the record. 01:35 6 MR. KOPEL: Good afternoon, Dr. Borth. 01:35	13 14 15 16	Q. Do you know what the size of the speaker 01:38 in this model tested was? 01:38  A. No. 01:38  Q. Do you know how many speakers it 01:38
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12 13 14 15 16 17 18 19 20 21	3 approximately 1:37 p.m. 01:35 4 This the beginning of Media 3. 01:35 5 We're back on the record. 01:35 6 MR. KOPEL: Good afternoon, Dr. Borth. 01:35 7 THE WITNESS: Hello. 01:35 8 BY MR. KOPEL: 01:35 9 Q. Okay. I'd like to run through the 01:35 9 remainder of these Chinese tests with you, please, so 01:35 1 let's please look at the exhibit marked as Borth 3. 01:35	13 14 15 16 17 18 19 20 21	Q. Do you know what the size of the speaker 01:38 in this model tested was? 01:38 A. No. 01:38 Q. Do you know how many speakers it 01:38 contained? 01:38 A. No. 01:38 Q. Do you know anything about the direction 01:38 Of the speaker? 01:38 A. Only an assumption that it had to be 01:38
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12 13 14 15 16 17 18 19 20 21 22	3 approximately 1:37 p.m. 4 This the beginning of Media 3. 5 We're back on the record. 6 MR. KOPEL: Good afternoon, Dr. Borth. 7 THE WITNESS: Hello. 8 BY MR. KOPEL: 9 Q. Okay. I'd like to run through the 9 Original of these Chinese tests with you, please, so 01:35 1 let's please look at the exhibit marked as Borth 3. 1 Do you have Exhibit 3? 2 Do you have Exhibit 3? 3 A. Yes, I do. 101:35	13 14 15 16 17 18 19 20 21 22 23	Q. Do you know what the size of the speaker 01:38 in this model tested was? 01:38 A. No. 01:38 Q. Do you know how many speakers it 01:38 contained? 01:38 A. No. 01:38 Q. Do you know anything about the direction 01:38 Of the speaker? 01:38 A. Only an assumption that it had to be 01:38 coming out of that hole to sit in front of the unit. 01:38

runner	
1 Q. Do you know if the speaker was static or 01:38	1 A. No, and it was not delineated in the 01:41
2 used sweeping frequencies? 01:39	2 table test results, 01:41
3 A. The testers did not state that. 01:39	3 Q. Given that you don't know what kind of 01:41
4 Q. But despite not knowing all that 01:39	4 food was used, is this test capable of replication? 01:41
5 information, you're still comfortable extending the 01:39	5 A. For the purposes of the reason the test 01:41
6 data that you saw from this test to all models of the 01:39	6 was conducted, yes. 01:41
7 Bell + Howell pest repellers; correct? 01:39	7 Q. Okay. Let's say they used food that was 01:42
8 A. Yes. 01:39	8 not typically eaten by spiders, ants, and roaches, 01:42
9 Q. What species of ants were used in this 01:39	9 would that make a difference if they had used food 01:42
10 test? 01:39	10 that spiders, ants, and roaches don't use versus if 01:42
11 A. It was not stated. 01:39	11 they use food that they do? 01:42
12 Q. What species of spiders were used in this 01:39	12 A. I don't think so because the key question 01:42
13 test? 01:39	13 is: Does the repeller repel the insects? 01:42
14 A. Not stated. 01:39	14 It does not talk about I mean 01:42
Q. What species of roaches were used in this 01:39	15 that's the simple question that's the question to 01:42
16 test? 01:39	16 be answered, the hypothesis. 01:42
17 A. Not stated. 01:39	17 Q. So it doesn't matter if the insects were 01:42
18 Q. What type of food did they provide to the 01:39	18 starving or not? 01:42
19 pests in this test? 01:39	19 A. Oh, it does. 01:42
20 A. I don't see that it's stated anywhere in 01:39	20 Q. Do you know if the insects were starving 01:42
21 the in the test report. 01:40	21 or not here? 01:42
22 Q. Do you think that a protocol should 01:40	22 A. No, I do not. 01:42
23 typically state what kind of food was being used? 01:40	23 Q. So does that give you concern given that 01:42
24 A. Yes. 01:40	24 you contend that that's relevant? 01:42
25 Q. Due to the fact that you don't know what 01:40	25 A. It does not concern me with respect to 01:42
Page 130	Page 132
1 kind of food was used, is this test capable of 01:40	1 the daily counts that they made. 01:42
2 replication? 01:40	2 Q. Is this test capable of replication if 01:42
3 MR. OSTOJIC: Object to form. 01:40	3 you don't know what type of food was used? 01:42
4 BY THE WITNESS: 01:40	4 A. You could replicate it at a high level. 01:42
5 A. Well, I I don't I'm going to go 01:40	5 You could not replicate it in 01:43
6 back, if I can, to the previous question. 01:40	6 exact without knowing that in exactly the same 01:43
7 There is no indication that food was 01:41	7 way. 01:43
8 provided at all. 01:41	8 Q. Typically in science when the term 01:43
9 BY MR. KOPEL: 01:41	9 replication is used with regard to studies, it's 01:43
10 Q. Okay. Can you please turn to page, which 01:41	10 meant that all the variables were kept the same; 01:43
11 is Section 5, Daily Testing Record? 01:41	11 correct? 01:43
12 A. Okay. Section 5, Daily Testing Record. 01:41	12 A, That's correct. 01:43
13 Okay. 01:41	13 Q. And then that 01:43
Q. Do you see here that it says, "Record the 01:41	14 A. Except
15 consumption of food and water in each chamber"? 01:41	15 Q. I'm sorry. Go ahead. 01:43
16 A. Yes, it does say that. 01:41	16 A. Except for no. In a replication 01:43
17 Q. Okay. And then two rows down it says, 01:41	17 you're exactly right. I was thinking treatment 01:43
18 "Record the weight of new food and water." 01:41	18 versus 01:43
19 Do you see that?	19 Q. So in that sense this test can't be 01:43
20 A. It does say that. 01:41	20 replicated; correct? 01:43
21 Q. Do you understand, based on that, that 01:41	21 A. Well, it could if the same experimenters 01:43
22 food was used in this test? 01:41	22 did it exactly the same way. We just don't know what 01:43
23 A. It appears that it was. 01:41	23 they did. 01:43
24 Q. But you don't know what kind of food it 01:41	
2. Dat you don't know what kind of lood it 01.41	1.24 O Right So given that we don't know that 0.1.42
25 was right? 01-41	24 Q. Right. So given that we don't know that, 01:43
25 was; right? 01:41 Page 131	24 Q. Right. So given that we don't know that, 01:43 25 could we replicate it? 01:43 Page 133

, , , , , , , , , , , , , , , , , , ,	
1 A. Oh, you might roll the dice and hit it; 01:43	1 all replicates should be identical. 01:46
2 but, no. I mean you wouldn't be certain. 01:43	Q. Was this have you seen that this test 01:46
3 Q. Given that we don't know what species of 01:43	3 was replicated? 01:46
4 each pest were used, could we replicate this test? 01:43	4 A. No. 01:46
5 A. Again, I go back to a previous question. 01:43	5 Q. In the course of your work at Dow, did 01:46
6 At the when you're talking about spiders, ants, 01:43	6 you require that tests that let me rephrase. 01:46
7 and roaches, the the specific the species, it 01:43	7 When you relied on data from testing 01:46
8 would be nice to have that information, but I don't 01:44	8 at Dow, did you ever rely on tests that were not 01:46
9 think it's necessary. 01:44	9 replicated? 01:46
0 Q. Typically in when you've seen peer- 01:44	10 A. Yes. 01:46
1 reviewed publications and they're doing replications 01:44	11 Q. Okay. Can you please turn to the page 01:46
2 of studies done on insects, have you seen that 01:44	12 with the chart titled, "Test Result"? 01:46
3 they're using the same species of insects in the 01:44	13 A. Okay. 01:46
4 replications? 01:44	14 Q. Okay. Were the spiders, ants, and 01:46
5 A. Yes. 01:44	
	1
6 Q. Have you seen any peer-reviewed 01:44	A. I got to go back to the methods and make 01:46
7 A. This 01:44	17 sure. 01:47
8 Q. I'm sorry. Go ahead. 01:44	18 Yes, they were. I've kind of forgot 01:47
9 A. But this was not intended to be published 01:44	19 the question. You asked whether 01:47
01:44	Q. I just asked whether they were in the 01:47
Q. Have you ever seen a study that was 01:44	21 same chamber? 01:47
2 published in a peer-reviewed journal where they used 01:44	22 A. Yes, they were. 01:47
3 different species of the insects for purposes of the 01:44	Q. Now, on this page at the bottom it says, 01:47
4 replication? 01:44	24 "Remarked quantity of tunnel was counted as 01:4
A. I can imagine that it happened, very 01:44	25 Chamber B." 01:48
Page 134	Page 13
1 casily. In a case where I want to determine and 01:44	1 Do you see that? 01:48
2 the basis of the label language, whether a pesticide 01:44	2 A. I do. 01:48
3 kills aphids, I could have soybean aphid, I could 01:44	3 Q. We don't know how many what were 01:48
4 have cotton aphid, I could have green bug, they're 01:44	4 observed in the tunnel; right? 01:48
5 all aphids, so if you want to write product 01:45	5 A. It doesn't call it out, I suspect you 01:48
6 literature that is understandable by your target 01:45	6 could do some arithmetic to figure it out. 01:48
7 audience, you may not use the different species, you 01:45	e
	7 O. How would you do that? 01:48
8 use you test it on a variety of species and then 01:45	7 Q. How would you do that? 01:48 8 A. Well, you would look at the the number 01:48
2 1	8 A. Well, you would look at the the number 01:48
9 lump it under an umbrella call aphids in that 01:45	8 A. Well, you would look at the the number 01:48 9 of insects that were in the test and if they were not 01:48
9 lump it under an umbrella call aphids in that 01:45 0 example. 01:45	8 A. Well, you would look at the the number 01:48 9 of insects that were in the test and if they were not 01:48 10 accounted for in the counts. 01:48
9 lump it under an umbrella call aphids in that 01:45 0 example. 01:45 1 Q. And that would not necessarily be a 01:45	8 A. Well, you would look at the the number 01:48 9 of insects that were in the test and if they were not 01:48 10 accounted for in the counts. 01:48 11 Q. Yeah, but it says, "The quantity of 01:48
9 lump it under an umbrella call aphids in that 01:45 0 example. 01:45 1 Q. And that would not necessarily be a 01:45 2 replication, that would be a different kind of test 01:45	8 A. Well, you would look at the the number 01:48 9 of insects that were in the test and if they were not 01:48 10 accounted for in the counts. 01:48 11 Q. Yeah, but it says, "The quantity of 01:48 12 tunnel was counted as Chamber B." 01:48
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9 lump it under an umbrella call aphids in that 01:45 0 example. 01:45 1 Q. And that would not necessarily be a 01:45 2 replication, that would be a different kind of test 01:45 3 to make sure it works equally across different 01:45 4 species; correct? 01:45 5 A. Yeah, replication is a different concept 01:45 6 than what I just discussed. 01:45 7 Q. Okay. So you haven't seen a 01:45 8 peer-reviewed study where — where what they did was 01:45 9 replicate a test using a different species; right? 01:45 10 A. No, in the true sense — in the most — 01:45 11 yes, I'll stop there because — now I got to keep 01:45 12 going. 01:45	8 A. Well, you would look at the the number 01:48 9 of insects that were in the test and if they were not 01:48 10 accounted for in the counts. 01:48 11 Q. Yeah, but it says, "The quantity of 01:48 12 tunnel was counted as Chamber B." 01:48 13 Do you see that? 01:48 14 A. I do. Okay. So, yeah, let me let me 01:48 15 correct myself. 01:48 16 They apparently counted what was in 01:48 17 the tunnel, and they simply included it with Chamber 01:48 18 B, which was the the chamber without the pest 01:48 19 repeller. 01:48 20 Q. Is it your understanding that that was 01:48 21 done in all the Chinese tests? 01:48 22 A. I'd have to look at each one. I don't 01:49
9 lump it under an umbrella call aphids in that 01:45 0 example. 01:45 1 Q. And that would not necessarily be a 01:45 2 replication, that would be a different kind of test 01:45 3 to make sure it works equally across different 4 species; correct? 01:45 5 A. Yeah, replication is a different concept 6 than what I just discussed. 01:45 6 than what I just discussed. 01:45 7 Q. Okay. So you haven't seen a 01:45 8 peer-reviewed study where — where what they did was 9 replicate a test using a different species; right? 10 A. No, in the true sense — in the most — 11:45 12 yes, I'll stop there because — now I got to keep 12 going. 01:45 13 Just because in the commonly way — 11:45 14 Just because in the commonly way — 11:45	8 A. Well, you would look at the the number 01:48 9 of insects that were in the test and if they were not 01:48 10 accounted for in the counts. 01:48 11 Q. Yeah, but it says, "The quantity of 01:48 12 tunnel was counted as Chamber B." 01:48 13 Do you see that? 01:48 14 A. I do. Okay. So, yeah, let me let me 01:48 15 correct myself. 01:48 16 They apparently counted what was in 01:48 17 the tunnel, and they simply included it with Chamber 01:48 18 B, which was the the chamber without the pest 01:48 19 repeller. 01:48 20 Q. Is it your understanding that that was 01:48 21 done in all the Chinese tests? 01:48 22 A. I'd have to look at each one. I don't 01:49 23 know. 01:49

1	A. Yes. 01:49	1	A. For that particular day, yes. 01:51
2	Q. Would it have been improper if they 01:49	2	•
	hadn't done that? 01:49	3	
4	MR. OSTOJIC: Object to form. 01:49 BY THE WITNESS: 01:49	4	Ç
			terms of your relying on this study? 01:51
6	A. Yeah, the word improper, it if they 01:49	6	1 ,
	set a rule in the beginning that says where they're 01:49 going to count something in a that's in a tunnel. 01:49		rely just on this particular test to draw opinions. 01:51
	<i>g g</i> , , , ,	8	(
	then you abide by the rule. 01:49 BY MR, KOPEL: 01:49	1	deduce whether or not the repellers are effective 01:51 based on this test? 01:51
11	Q. Well, do you see the next sentence says, 01:49	11	·
	"Add a new spider, ants, and roaches according to the 01:4	1	A. Well, for that, if you don't mind, I'll 01:51 go back to my report which gives me the statistics. 01:52
	quantity of loss the next day." 01:49	13	Q. That's no problem, but while you're 01:52
14	Do you see that? 01:49	ł	reviewing the statistics, can you please take a look 01:52
15	A. Yes. 01:49	1	as to whether you accounted for the quantity of lost 01:52
16	Q. Was that a proper thing for them to do? 01:49	1	that were added and where you count which chamber 01:52
17	A. I would not have done that. 01:49	1	you counted them as being added to? 01:52
18	Q. Does that call the data that came from 01:49	18	
	the study into question? 01:49		BY THE WITNESS: 01:52
20	MR. OSTOЛС: Object to form, but go ahead. 01:49		
1	BY THE WITNESS: 01:49		I took the data, the counts that were provided per 01:53
22	A. I don't think seriously. 01:49		day, each day for roaches — well, for all of them. 01:53
23	BY MR. KOPEL: 01:49	23	Q. Were the repellers effective at driving 01:53
24	Q. Well, let's take a step back. 01:49		out spiders, ants, or roaches for any day of the 01:53
25	When they replaced them, which 01:49		study? 01:53
	Page 138		Page 140
1	chamber did they put them in? 01:49	1	A. Yes. 01:53
2	A. I'd have to assume they put them in the 01:50	2	Q. Okay. So on Day 1 had they driven out 01:53
3	one where they were originally released, where they I 01:50	3	all the spiders, ants, or roaches? 01:53
4	think originally released they said they split them 01:50	4	
5	50/50, so more than likely they put them back in the 01:50	5	question? 01:53
	same way that they introduced the original 01:50	6	MR. KOPEL: Sure. 01:53
7	population. 01:50		BY MR. KOPEL:
8	Q. I I don't understand. 01:50	8	Q. On Day 1 had the repeller driven out all 01:53
9	So, in other words, if you look at 01:50	9	the spiders, ants, and roaches? 01:53
10	Day 3, right, so it looks like they added three 01:50		
١.	•	10	
	roaches. Which chamber were the three roaches added 01:50	11	MR. KOPEL: That's what I said. 01:54
12	roaches. Which chamber were the three roaches added 01:50 to? 01:50	11 12	MR. KOPEL: That's what I said. 01:54 BY THE WITNESS: 01:54
12 13	roaches. Which chamber were the three roaches added 01:50 to? 01:50  A. Wait a minute. Okay. Day 3 under 01:50	11 12 13	MR. KOPEL: That's what I said. 01:54 BY THE WITNESS: 01:54 A. Are you I need a clarification. 01:54
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12 13 14 15 16 17	roaches. Which chamber were the three roaches added 01:50 to? 01:50  A. Wait a minute. Okay. Day 3 under 01:50 testing, the third 01:50 Q. Test Result Day 3, there's a at the 01:50 bottom of the chart it says, "Quantity of loss." 01:50 Do you see that? 01:50	11 12 13 14 15 16 17	MR. KOPEL: That's what I said. 01:54  BY THE WITNESS: 01:54  A. Are you I need a clarification. 01:54  When you say, "spiders, ants, and 01:54  roaches," are you talking about the combined species, 01:54  or are you asking me for spiders alone, for ants 01:54  alone, for roaches alone? 01:54
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12 13 14 15 16 17 18 19 20 21	roaches. Which chamber were the three roaches added 01:50 to? 01:50  A. Wait a minute. Okay. Day 3 under 01:50 testing, the third 01:50  Q. Test Result Day 3, there's a at the 01:50 bottom of the chart it says, "Quantity of loss." 01:50  Do you see that? 01:50  A. Yes. 01:50  Q. So it looks like they put in 3 new 01:50 roaches on Day 3; right? 01:50  A. That's what it looks like, yes. 01:50	11 12 13 14 15 16 17 18 19 20 21	MR. KOPEL: That's what I said. 01:54  BY THE WITNESS: 01:54  A. Are you I need a clarification. 01:54  When you say, "spiders, ants, and 01:54  roaches," are you talking about the combined species, 01:54  or are you asking me for spiders alone, for ants 01:54  alone, for roaches alone? 01:54  BY MR. KOPEL: 01:54  Q. The latter. 01:54  A. Okay. All right. And then sorry. 01:54  Repeat the question again because I'm ready to 01:54
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12 13 14 15 16 17 18 19 20 21 22 23 24	roaches. Which chamber were the three roaches added 01:50 to? 01:50  A. Wait a minute. Okay. Day 3 under 01:50 testing, the third 01:50 Q. Test Result Day 3, there's a at the 01:50 bottom of the chart it says, "Quantity of loss." 01:50 Do you see that? 01:50 A. Yes. 01:50 Q. So it looks like they put in 3 new 01:50 roaches on Day 3; right? 01:50 A. That's what it looks like, yes. 01:50 Q. Okay. Which chamber were they put in? 01:50 A. It's not readily apparent. 01:50	11 12 13 14 15 16 17 18 19 20 21 22 23 24	MR. KOPEL: That's what I said. 01:54  BY THE WITNESS: 01:54  A. Are you I need a clarification. 01:54  When you say, "spiders, ants, and 01:54  roaches," are you talking about the combined species, 01:54  or are you asking me for spiders alone, for ants 01:54  alone, for roaches alone? 01:54  BY MR. KOPEL: 01:54  Q. The latter. 01:54  A. Okay. All right. And then sorry. 01:54  Repeat the question again because I'm ready to 01:54  answer, but I need to know 01:54  Q. Sure. 01:54

1 and a biologically or commercially relevant effect? 01:54	1 BY MR. KOPEL: 01:56
2 MR. OSTOЛС: Object to form. 01:54	2 Q. Why wouldn't a consumer see them? 01:56
3 Go ahead. 01:54	3 A. I don't know that they would. I'm saying 01:56
4 BY THE WITNESS: 01:54	4 they may not see them. You have fewer numbers to be 01:56
5 A. One usually follows the other, but not 01:54	5 seen. They could be hiding. 01:56
6 necessarily do you need to have statistically 01:54	6 Q. So when you say, "to drive out" do you 01:57
7 significant to commercialize something. 01:54	7 think that just means a statistically significant 01:57
8 BY MR. KOPEL: 01:54	8 effect? 01:57
9 Q. Okay. And throughout the course of this 01:54	9 A. That's a 01:57
10 test there were always spiders in Chamber A; correct? 01:54	10 MR. OSTOJIC: Object to form. 01:57
11 A. Yes. 01:55	11 But go ahead. 01:57
Q. Throughout the course of this test there 01:55	12 BY THE WITNESS: 01:57
13 were always ants in Chamber A; correct? 01:55	13 A. That's an objective way to show a 01:57
14 A. Correct. 01:55	14 difference. 01;57
Q. Throughout the course of this test there 01:55	15 BY MR. KOPEL: 01:57
16 were always roaches in Chamber A; correct? 01:55	16 Q. Okay. And do you agree that a consumer 01:57
17 A. Yes. 01:55	17 might view the words differently than a scientist? 01:57
18 Q. Now, if these results were seen in a 01:55	18 BY THE WITNESS: 01:57
19 residential home using a repeller, do you think a 01:55	19 A. I don't know. 01:57
20 consumer would be satisfied with the product? 01:55	20 MR. OSTOJIC: Same objections as before, 01:57
21 A. Yeah, I 01:55	21 including speculation. 01:57
22 MR. OSTOЛС: Object to form, foundation. 01:55	22 Go ahead, 01:57
23 May call for speculation depending upon the consumer 01:55	23 BY THE WITNESS: 01:57
	24 A. I have no way of knowing. 01:57
	25 A. Thave no way of knowing.
25 Page 142	
1 BY THE WITNESS: 01:55	1 BY MR. KOPEL: 01:57
2 A. And I would go back to the chi-square 01:55	2 Q. I thought you were an expert on this 01:57
3 test that I did, and even though you see that there 01:55	3 topic? 01:57
4 are those pests in every day, the difference between 01:55	4 A. I am. 01:57
5 the number Chamber A and those in Chamber B is 01:55	5 Q. You are? 01:57
6 significantly different in most cases. 01:55	6 A. What topic are you talking about? 01:57
7 BY MR. KOPEL:	7 Q. Well, don't — didn't you say you were an 01:57
	8 expert in terms of labeling claims? 01:57
	9 A. Yes. 01:57
9 consumer a chi-square test to show a a 01:55	
· ·	10 Q. Okay. So would a consumer review this 01:5'
11 satisfied despite seeing the presence of each of 01:55	11 labeling claim in the same manner as a scientist? 01:5
11 satisfied despite seeing the presence of each of 01:55 12 these pests on every day using a repeller? 01:56	11 labeling claim in the same manner as a scientist? 01:5 12 MR. OSTOJIC: Would or should? I same 01:
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11 satisfied despite seeing the presence of each of 01:55 12 these pests on every day using a repeller? 01:56 13 A. Well 01:56 14 MR. OSTOJIC: Wait, wait. Let me make an 01:56	11 labeling claim in the same manner as a scientist? 01:5 12 MR. OSTOJIC: Would or should? I same 01: 13 objections as before. 01:57 14 BY THE WITNESS: 01:57
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11 satisfied despite seeing the presence of each of 01:55 12 these pests on every day using a repeller? 01:56 13 A. Well 01:56 14 MR. OSTOJIC: Wait, wait. Let me make an 01:56 15 objection here. 01:56 16 Object to form, foundation, 01:56 17 irrelevant, inconsequential question, and also may 01:56 18 call for speculation as to any specific consumer. 01:56 19 But go ahead and answer. 01:56 20 BY THE WITNESS: 01:56 21 A. Well, that's kind of what I was going to 01:56 22 say. It depends when the consumer when you take 01:56	11 labeling claim in the same manner as a scientist? 01:5 12 MR. OSTOJIC: Would or should? I same 01: 13 objections as before. 01:57 14 BY THE WITNESS: 01:57 15 A. I don't understand the relevancy. Maybe 01:57 16 ask it a different way. 01:57 17 BY MR. KOPEL: 01:57 18 Q. Would a consumer review the claim drives 01:19 pests out the same way as a scientist would review 01:20 that claim? 01:58 21 A. I don't know the scientist, I don't know 01:58
11 satisfied despite seeing the presence of each of 01:55 12 these pests on every day using a repeller? 01:56 13 A. Well 01:56 14 MR. OSTOJIC: Wait, wait. Let me make an 01:56 15 objection here. 01:56 16 Object to form, foundation, 01:56 17 irrelevant, inconsequential question, and also may 01:56 18 call for speculation as to any specific consumer. 01:56 19 But go ahead and answer. 01:56 20 BY THE WITNESS: 01:56 21 A. Well, that's kind of what I was going to 01:56 22 say. It depends when the consumer when you take 01:56	11 labeling claim in the same manner as a scientist? 01:5 12 MR. OSTOJIC: Would or should? I same 01: 13 objections as before. 01:57 14 BY THE WITNESS: 01:57 15 A. I don't understand the relevancy. Maybe 01:57 16 ask it a different way. 01:57 17 BY MR. KOPEL: 01:57 18 Q. Would a consumer review the claim drives 01::19 pests out the same way as a scientist would review 01:20 that claim? 01:58 21 A. I don't know the scientist, I don't know 01:58 22 the consumer. 01:58
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1 BY THE WITNESS: 01:58	1 A. Had they been yes, but the degree to 02:00
2 A. They may if they went to university and 01:58	2 which I don't know. 02:00
3 had statistic class. 01:58	3 O. Well 02:00
4 BY MR, KOPEL: 01:58	4 A. Because the differences are highly 02:00
5 Q. Given that there were uncertainties of 01:58	5 significant for spiders and let's see ants 02:00
6 large numbers of new pests added in the middle of the 01:58	6 under Point 1, Probably Point 1; for roaches, highly 02:0
7 test and you don't know what chamber they're added 01:58	7 significant; and for the combination of all pests, 02:00
8 to, are you really comfortable relying on this test? 01:58	8 highly significant differences in Chamber A and 02:0
9 A. Yes. 01:58	9 Chamber B. 02:00
10 MR, OSTOЛC: Asked and answered. 01:58	Q. But you haven't done the calculations to 02:00
11 But go ahead. 01:58	11 figure that out; have you? 02:00
12 BY THE WITNESS: 01:58	12 A. I said that what I did was take the 02:00
13 A. Yes again. 01:58	13 numbers as presented there. I did not take into 02:00
14 BY MR, KOPEL: 01:58	14 account the quantity lost as they describe it. 02:00
15 Q. Do you think that this would pass muster 01:58	15 Q. Was that a mistake? 02:01
16 in peer review? 01:58	16 A. No. 02:01
17 MR, OSTOJIC: Object to form. 01:58	17 Q. Now, if you look at roaches, it looks 02:01
18 But go ahead. 01:58	18 like they added 12 roaches over the course of the 02:01
19 BY THE WITNESS: 01:58	19 test. 02:01
20 A. It depends on the peers, it depends on 01:58	20 Do you see that? 02:01
21 the publication. 01:58	21 A. 9 plus 3. Yes. 02:01
22 BY MR, KOPEL: 01:58	Q. And then they had 16 at the end of the 02:01
23 Q. Would you have relied on a test like this 01:58	23 test. 02:01
24 in the course of your work at Dow? 01:58	Do you see that on Day 7? 02:01
25 A. No. 01:58	25 A. Had 16 roaches in Chamber B, yes, I see 02:01
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1 Q. Wby not? 01:58	1 that. 02:01
A. Too many unanswered questions. 01:58	2 Q. Oh, excuse me. You're right. 02:01
Q. So why are you more comfortable in the 01:58	3 Okay. So they had 20 roaches total 02:01
A course of your world here returns on if 1 11.50	A Y2 77 10 00 00 00
4 course of your work here relying on it? 01:58	4 on Day 7; correct? 02:01
5 A. Because the I because I've worked 01:59	5 A. Yes. 02:01
5 A. Because the – I – because I've worked 01:59 6 with Dow Chemical, I know the rigor with which they 01:59	5 A. Yes. 02:01 6 Q. Okay. So the majority of the roaches 02:01
5 A. Because the – I – because I've worked 01:59 6 with Dow Chemical, I know the rigor with which they 01:59 7 require their data to be obtained and used and 01:59	5 A. Yes. 02:01 6 Q. Okay. So the majority of the roaches 02:01 7 were added during the course of that test; correct? 02:01
5 A. Because the I because I've worked 01:59 6 with Dow Chemical, I know the rigor with which they 01:59 7 require their data to be obtained and used and 01:59 8 analyzed. 01:59	5 A. Yes. 02:01 6 Q. Okay. So the majority of the roaches 02:01 7 were added during the course of that test; correct? 02:01 8 A. Yes. 02:01
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1 marked as Exhibit 4? 02:02	1 misunderstanding each other. 02:04
2 A. Yes. 02:02	2 A. Okay. 02:04
Q. Have you seen it before? 02:02	3 Q. Let me please clarify. 02:04
4 A. Yes. 02:02	4 Typical American homes tend to have 02:04
5 Q. What is it? 02:02	5 heat during the wintertime; correct? 02:04
6 A. A Test Report from QMANN Quality Service 02:02	6 A. Yes, I'd agree. 02:04
7 Company. Product Description, Bell + Howell 02:03	7 Q. Okay. Do you agree that the temperature 02:05
8 Ultrasonic Test Repeller. Test Period, November 1 02:03	8 that the test was conducted might affect the movement 02:05
9 through November 19, 2010. The purpose of test, 02:03	9 of the pest tested? 02:05
10 Model 50161 Pest Repeller Effective Coverage. 02:03	10 A. Yes. 02:05
Q. Now, I'm sorry. I have to ask you some 02:03	11 Q. Okay. So would you agree with me that it 02:05
12 of the same questions here as I've asked already, and 02:03	12 would be hard to take the results of this test in 02:05
13 hopefully we can move through it quickly. 02:03	13 order to render an opinion about what the outcome 02:05
14 You don't know what species of mice, 02:03	14 would have been under conditions in typical American 02:05
15 spiders, and roaches were used in this test; correct? 02:03	15 homes given that American homes would be a different 02:05
16 A. No. 02:03	16 temperature than this test was done at? 02:05
17 Q. Did you know that Ms. Feuerstein 02:03	17 MR. OSTOЛС: Object. Form. Also, it 02:05
18 testified that it was there was no heat on during 02:03	18 misstates the evidence as to the temperature because 02:05
19 the the while this test was operational? 02:03	19 the temperature is here on the report, and that it's 02:05
20 A. I do not recall that. 02:03	20 different than American homes. 02:05
Q. If if that were true, would that be a 02:03	21 BY MR. KOPEL: 02:05
22 problem? 02:03	22 Q. Okay. And here, too, mice, spiders, and 02:05
23 MR. OSTOJIC: Object to form, foundation, 02:03	23 roaches were tested at the same time; correct? 02:05
24 incomplete. <b>02:</b> 03	24 A. It seems like that's what they mean by 02:06
25 But go ahead. 02:03	25 the footnote: "Put mice, spiders, and roaches in 02:06
Page 150	Page 152
1 BY THE WITNESS: 02:03	1 rooms." 02:06
A. Not in comparing, no, because the same - 02:03	2 It does not say one way or the other 02:06
3 if there wasn't any heat in what they're labeling 02:04	3 whether they were together or different. 02:06
4 No. 7, there wasn't any heat in No. 8, so everything 02:04	4 Q. I think I can — might be able to point 02:06
5 is the same. 02:04	5 you to something that might refresh your recollection 02:06
6 BY MR. KOPEL: 02:04	6 on this. 02:06
7 Q. All right. Would the would the the 02:04	7 If you look on the first page, 02:06
8 data from this test necessarily be the same under 02:04	8 Testing Procedures, No. 1A? 02:06
9 circumstances in a typical American residential home 02:04	9 A. Yep. There you go. Exactly you're 02:06
10 which would have heat? 02:04	10 right. 02:06
11 A. Could be. I have no way of knowing. 02:04	11 Q. So and just for purposes of the 02:06
12 Q. So it would be speculative one way or the 02:04	12 record, I'm right that they were tested at the same 02:06
•	12 4:
13 other; correct? 02:04	13 time; correct? 02:06
13 other; correct? 02:04 14 MR. OSTOJIC: Object. Form, foundation, 02:04	14 A. Correct. 02:06
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3 BY THR WITNESS:   3 So 1 go bask to — this is QMANN   02.09	, and the second	· · ·
4 A. For what they tried — were trying for — 02:07 5 for the purposes of this isst, they — what is the 02:07 7 protocol the way they did to achieve the purposes of 02:07 7 protocol the way they did to achieve the purposes of 02:07 7 protocol the way they did to achieve the purposes of 02:07 8 the test. 02:07 7 protocol the way they did to achieve the purposes of 02:07 8 the test. 02:07 10 them properly scaling the doors and a wooden board, 02:07 11 taped, that — that bullet point, if say, yeah, it 02:07 12 was proper under their conditions and for what they 02:07 13 wasted to do. 02:07 14 BYMR KOPEL: 02:07 15 Q. And — and when you say what they wanted 02:07 16 to do, are you referring to testing the efficacy of 02:07 17 the Bell + Howell repellers against mice, spiders, 02:07 19 A. The going back to the propose of the test 02:07 10 at one properly saching the coverage means the 02:08 22 Q. And official everying to answer. 02:08 23 repellency coverage; correct? 02:08 24 A. Yes, I woold assume to. 02:08 25 Q. Okay, Now, all the — all the mice, 02:08 26 Q. Was, I was that an improper thing to do in this 02:08 3 Du you see that? 02:08 4 A. That's what if says, yes. 02:08 9 A. It's not the only ones that did it that 02:08 10 Q. Was that improper rot ming to do in this 02:08 11 Q. Was it improped refinent to 06 birs, 02:08 12 Q. Nat sit improped refinent to 06 birs, 02:08 13 Q. Was that improper rot schieve their 02:08 14 A. No, not improper them to 06 birs, 02:08 15 Q. Was it improped refinent to 06 birs, 02:08 16 Q. Was it improped refinent to 06 birs, 02:08 16 Q. Was it improped refinent to 06 birs, 02:08 17 Q. Was it improped refinent to 06 birs, 02:08 18 Q. Was that improper for achieve their 02:08 19 A. It's not the only ones that did it that 02:08 16 Q. Was it improped refinent to 06 birs, 02:08 17 Q. Was it improped refinent to 06 birs, 02:08 18 Q. Was that improper for achieve their 02:08 19 A. This not the only ones that did it that 02:08 16 Q. Was it improped refore the condition of the protocol did it was		
5 for the purposes of this test, they what's the		'
6 right word — deduced — they — they set the 102:07 7 protocol the way fixey did to achieve the purposes of 02:07 7 protocol the way fixey did to achieve the purposes of 02:07 8 So I have to say that they—by 02:07 10 them properly scaling the doors and a woodan board, 02:07 11 traped, that — that bullet point, If 9 say, yeah, it 02:07 12 was proper under their conditions and for what they 02:07 13 wanted to do. 02:07 14 BY MR. KOPEL: 02:07 15 Q. And — and when you say what they warned 02:07 15 Go. And — and when you say what they warned 02:07 16 to do, mr you referring to testing the efficacy of 02:07 17 the Bell + Howell repeller against mice, spiders, 02:07 18 and roaches; correct? 02:08 21 must be what they were trying to answer. 02:08 22 Q. And effective coverage, Than's 02:08 23 repellency coverage; correct? 02:08 24 A. Yes, I would assume 80. 02:08 25 Q. Chay, Now, all the — all the mice, 02:08 26 protocol that they were reclased into Room 7 at the 02:08 27 same time. 02:08 28 p. A. If an orthe condy ones that did it that 02:08 29 A. If so not the only ones that did it that 02:08 30 way. I think. Dr. Potter did his what way too. 02:08 41 A. No, not improper to achieve them a dot this? 02:08 42 A. If signet the — if stheir protocol, 02:08 43 Q. Was that mimproper thing to do in this 02:08 44 A. No, not improper for them to do this? 02:08 45 Q. Was that an improper them to do this? 02:08 46 protocol that they were put into Room 7 all at the 02:08 47 A. I think I put that in my report. 02:08 48 A. That's what it says, yes. 02:08 49 A. If so not the only ones that did it that 02:08 50 Q. Was that an improper them to do this? 02:08 51 Q. Was it improper for them to do this? 02:08 52 Q. And then, in fact, on Precest Day 3 there 02:10 53 Room 7? 02:09 54 A. No, not improper to achieve their 02:09 55 Q. Was that mimproper to achieve their 02:09 56 Q. Was that mimproper to achieve their 02:09 57 Q. Was that mimproper to achieve their 02:09 58 Was Droaches in propose of them to 00 this? 02:08 59 A. Their —it sthein		
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10 them properly sealing the doors and a wooden board, 02:07   11 raped, that - that builted point, 1'd say, yeah, it 02:07   12 was proper under their conditions and for what they 02:07   13 wanted to do. 02:07   13 wanted to do. 02:07   13 wanted to do. 02:07   14 BY MR. KOPEL: 02:07   15 G. And - and when you say what they wanted 02:07   15 G. And - and when you say what they wanted 02:07   16 to do, are you referring to testing the efficacy of 02:07   16 fo do, are you referring to testing the efficacy of 02:07   17 the Bell+ Howell repellers against mice, spiders, 02:07   18 and roaches; correct? 02:07   18 and roaches; correct? 02:07   18 and roaches; correct? 02:08   22 Q. And effective coverage. That's 02:08   22 Q. And effective coverage means the 02:08   22 Q. And effective coverage means the 02:08   22 Q. And effective coverage means the 02:08   23 disproportionate number of mice in Room 8 the first 02:10   22 might have caused these swings back and forth whith a 02:10   23 disproportionate number of mice in Room 8 the first 02:10   22 might have caused these swings back and forth with a 02:10   23 disproportionate number of mice in Room 8 the first 02:10   23 disproportionate number of mice in Room 8 the first 02:10   23 disproportionate number of mice in Room 8 the first 02:10   24 few days, and then a disproportionate number of mice in Room 8 the first 02:10   25 in Room 7? 02:10   24 few days, and then a disproportionate number of mice in Room 8 the first 02:10   25 in Room 7? 0		-
11   12   Law proper under their conditions and for what they   02:07		,
12   was proper under their conditions and for what they   02:07   13 wasned to do.   02:07   14 BY MR. KOPEL:   02:07   15   Q. And – and when you say what they wanted   02:07   16 to do, are you referring to testing the efficacy of   02:07   16 to do, are you referring to testing the efficacy of   02:07   18 and roaches; correct?   02:08   17 A. That's down the —   02:10   19 A. Sorry. 3 and 12 — 3 and — no, they   02:10   10   10   10   10   10   10   10	, , , , ,	
13   A. They're - 3, 3, and 15. 2 are equal, 1   02:10		
14 BY MR. KOPEL:   02.07   14 is not. Whether they're statistically significant — 02:10   15 Q. And — and when you say what they wanted   02:07   17 the Bell + Howell repellers against mice, spiders,   02:07   18 and roaches; correct?   02:07   18 And roaches; correct?   02:07   18 And roaches; correct?   02:07   18 Q. Yes.   02:10   19 A. That's down the —   02:10   10   19 A. That's down the —   02:10   19 A. Sorry. 3 and 12 — 3 and — no, they   02:10   19 A. Sorry. 3 and 12 — 3 and — no, they   02:10   19 A. Sorry. 3 and 12 — 3 and — no, they   02:10   10   19 A. Sorry. 3 and 12 — 3 and — no, they   02:10   10   10   10   10   10   10   10	12 was proper under their conditions and for what they 02:07	1 1
15   Q. And and when you say what they wanted   02:07   16 to do, are your referring to testing the efficacy of   02:07   17 the Bell + Howell repellers against mice, spiders,   02:07   18 and rosshes; correct?   02:07   18 and rosshes; correct?   02:07   18 and rosshes; correct?   02:08   20 to test pest repeller effective coverage. That's   02:08   20 to test pest repeller effective coverage. That's   02:08   20 to test pest repeller effective coverage means the   02:08   21 must be what they were trying to answer.   02:08   22 Q. And effective coverage means the   02:08   23 disproportionate number of mice in Room 8 the first   02:10   22 might have caused these swings back and forth with a   02:10   23 disproportionate number of mice in Room 8 the first   02:10   24 few days, and then a disproportionate number of mice   02:10   25 in Room 77   02:10	13 wanted to do. 02:07	13 A. They're 3, 3, and 15. 2 are equal, 1 02:10
16 to do, are you referring to testing the efficacy of   02:07     17 to the Bell + Howelt repellers against mice, spiders,   02:07     17 A. That's down the —   02:10     18 and roaches; correct?   02:08     19 A. Sorry. 3 and 12 — 3 and — no. (bey   02:10     20 were not equal.     02:10     21 were not equal.     02:10     22 were not equal.     02:10     22 were not equal.     02:10     23 disproportionate number of mice in Room 8 the first   02:10     24 few days, and then a disproportionate number of mice in Room 8 the first   02:10     24 few days, and then a disproportionate number of mice in Room 8 the first   02:10       25 in Room 7?	14 BY MR. KOPEL: 02:07	14 is not. Whether they're statistically significant - 02:10
17 the Bell + Howell repellers against mice, spiders,   02:07   18 and roaches; correct?   02:07   18 B Q. Yes.   02:10   19 A. Sorny. 3 and 12 – 3 and – no, they   02:10   10   10 A. Sorny. 3 and 12 – 3 and – no, they   02:10   10 A. No, No, 17 In the stories of mice in pome 8 the first   02:10   10 A. No, No, 17 In the stories of mice in pome 8 the first   02:10   10 A. No, No, 17 In the stories of mice in	15 Q. And and when you say what they wanted 02:07	15 oh, wait a minute. 02:10
18   A. Trangoing back to the purpose of the test   02:08   20 to test pest repeller effective coverage. That's   02:08   21 must be what they were trying to answer.   02:08   22   Q. And effective coverage means the   02:08   23 repellency coverage; correct?   02:08   24   A. Yes, I would assume so.   02:08   25   Q. Okay. Now, all the - all the mice,   02:08   Page 154   25 in Room 7?   02:10   24   few days, and troaches were released into Room 7 at the   02:08   25   Q. Okay. Now, all the - all the mice,   02:08   Page 154   26 in Room 7 and 1 the   02:08   26 in Room 7?   02:10   Page 156   27   28   29   29   29   29   29   29   29	16 to do, are you referring to testing the efficacy of 02:07	16 Q. I think
19	17 the Bell + Howell repellers against mice, spiders, 02:07	17 A. That's down the 02:10
20 to test pest repeller effective coverage. That's   02:08   20 were not equal.   02:10   21 must be what they were trying to answer.   02:08   22   Q. And effective coverage means the   02:08   23 repellency coverage; correct?   02:08   24   A. Yes, I would assume so.   02:08   24   few days, and then a disproportionate number of mice   02:10   02:10   25 in Room 7?   02:10   26 in Room 7?   02:10   27 in R	18 and roaches; correct? 02:07	18 Q. Yes. 02:10
21 must be what they were trying to answer.  22 Q. And effective coverage means the  23 repellency coverage; correct?  24 A. Yes, I would assume so.  25 Q. Okay. Now, all the all the mice,  26 years and roaches were released into Room 7 at the  27 years a same time.  28 page 154  1 spiders, and roaches were released into Room 7 at the  29 same time.  20 Q. Was that it says, yes.  20 Q. Was that it says, yes.  20 Q. Was that an improper thing to do in this  20 Q. Was that an improper thing to do in this  20 years a same time? In other words, rather than half of them  20 years a same time? In other words, rather than half of them  20 years  20 years the first heir protecol.  21 Q. Do you have any understanding of what  22 disproportionate number of mice in Room 8 fthe first  23 disproportionate number of mice in Room 8 fthe first  24 few days, and then a disproportionate number of mice in Room 8 fthe first  25 q. Okay. Now, all the all the mice,  26 few days, and then a disproportionate number of mice in Room 8 fthe first  27 few days, and then a disproportionate number of mice in Room 8 fthe first  28 few days, and then a disproportionate number of mice in Room 8 fthe first  29 few days, and then a disproportionate number of mice in Room 8 fthe first  20 year few days, and then a disproportionate number of mice in Room 8 fthe first  20 year few days, and then a disproportionate number of mice in Room 8 fthe first  20 year few days, and then a disproportionate number of mice in Room 8 fthe first  20 year few days, and then a disproportionate number of mice in Room 8 fthe first  20 year few days, and then a disproportionate number of mice in Room 8 fthe first  20 year few days, and then a disproportionate number of mice in Room 8 fthe first  20 year few days, and then a disproportionate number of mice in Room 8 fthe first few forms  20 year few days, and then a disproportionate number of mice in Room 8 fthe first  20 year few days, and then a disproportionate number of mice in Room 8 fthe first  20 year few	19 A. I'm going back to the purpose of the test 02:07	19 A. Sorry. 3 and 12 3 and no, they 02:10
22    Q. And effective coverage means the   02:08   23 repellency coverage; correct?   02:08   24   A. Yes, I would assume so.   02:08   25   Q. Okay. Now, all the — all the mice,   02:08   25   Q. Okay. Now, all the — all the mice,   02:08   26   Fage 154   27   Fage 155   28   29   29   29   29   29   29   20   20	20 to test pest repeller effective coverage. That's 02:08	20 were not equal. 02:10
23 repellency coverage; correct? 24 A. Yes, I would assume so. 25 Q. Okay. Now, all the all the mice, 26 S Q. Okay. Now, all the all the mice, 27 Same time. 28 Do you see that? 3 Do you see that? 4 A. That's what it says, yes. 4 A. That's what it says, yes. 5 Q. Was that an improper thing to do in this 6 protocol that they were put into Room 7 all at the 7 Same time? 7 Same time? 8 In Room 7, half in Room 8? 9 A. It's not the only ones that did it that 9 A. It's not the only ones that did it that 9 A. It's just the it's their protocol. 10 Q. Was that improper? Yes or no? 11 Q. Was that improper to achieve their 12 Q. Was that improper to achieve their 13 Q. Was that improper when Dr. Potter did it; old it, it was oay problem? 14 A. No, not improper when Dr. Potter did it, it was okay; 15 Q. Okay. So when they did it, it was oay problem? 16 Q. Okay. So when they did it, it was oay; 17 Q. A. Their it would have been better to 02:09 18 Was they in proper for them to 02:09 29 Was their protocol. 20 Cokay. So when they protect. 20 Cokay. So when they did it, it was oay; 20 Q. Okay. So when they did it, it was oay; 20 Q. Okay. So when they did it, it was oay; 21 Q. Okay. Was it improper for them to 02:09 20 A. Their it would have been better to 02:09 21 well, let me look at their post, their pretest. 22 Because it all comes down to 02:09 23 wherever they put them in the it really doesn't o2:09 24 matter, I think, in what chamber they put them as 02:09 25 long as in their pretest period these pests 02:09 26 long as in their pretest period these pests 02:09 27 Cokay. So on Pretest Day 1 for spiders, 02:10 28 disproportionate number of mice in Room 8 the first 02:10 29 A. No, I'm not testifying with mice. I 02:10 20 A. No, I'm not testifying with mice. I 02:10 20 A. No, I'm not testifying with mice. I 02:10 21 A. No, I'm not testifying with mice. I 02:10 22 A. A. No, I'm not testifying with mice. I 02:10 23 den' tknow. 24 few days, and then a disproportionate number of mice 25 in Room 7? 25 In	21 must be what they were trying to answer. 02:08	21 Q. Do you have any understanding of what 02:10
24 few days, and then a disproportionate number of mice   02:10   25 Q. Okay. Now, all the —all the mice,   02:08   Page 154   25 in Room 7?   02:10   Page 156   25 same time.   2 don't know.   02:10   26 same time.   2 don't know.   02:10   3 Do you see that?   02:08   4 A. That's what it says, yes.   02:08   4 Were they equal?   02:10   5 Q. Was that an improper thing to do in this   02:08   6 protocol that they were put into Room 7 all at the   02:08   7 same time? In other words, rather than half of them   02:08   8 in Room 7, half in Room 8?   02:08   7 Q. And then, in fact, on Pretest Day 3 there   02:10   8 in Room 7, half in Room 8?   02:08   7 Q. And then, in fact, on Pretest Day 3 there   02:10   9 A. It's not the only ones that did it that   02:08   10 Q. Okay. So they were not equal ther?   02:11   10 Q. Was it improper for them to do this?   02:08   11 A. No, not improper to achieve their   02:08   12 Q. And -and on Pretest Day 3 there   02:10   11 Q. Was it improper for them to do this?   02:08   13 was 20 roaches in Room 7 with 0 in Room 8.   02:11   12 Q. And -and on Pretest Days 1 and 3, there   02:11   13 Q. Was it improper when Dr. Potter did it;   02:08   14 Do you see that?   02:11   15 purpose.   02:09   15 A. Yes.   02:11   16 Q. Okay. So when they did it, it was okay;   02:09   16 Q. Okay. So when they did it, it was okay;   02:09   17 A. No.   02:11   18 Q. Okay. So when they did it, it was okay;   02:09   18 Q. Okay. So when they did it, it was okay;   02:09   19 release all the pests in the room with the repeller   02:11   19 when Dr. Potter did it, it was okay;   02:09   19 release all the pests in the room with the repeller   02:11   20 A. Their it would have been better to 02:09   20 at the outset of the test?   02:11   21 Where they put them in the it really dosen't   02:09   20 at the outset of the test?   02:11   22 ushecive. It depends on the purpose of the test   02:11   23 ushecive. It has a has different pests in it at the same time,   02:11   24 has a has dif	22 Q. And effective coverage means the 02:08	22 might have caused these swings back and forth with a 02:10
25 Q. Okay. Now, all the — all the mice, 02:08 Page 154  1 spiders, and roaches were released into Room 7 at the 02:08 ame time.  3 Do you see that? 02:08 0	23 repellency coverage; correct? 02:08	23 disproportionate number of mice in Room 8 the first 02:10
Page 154   Page 156	24 A. Yes, I would assume so. 02:08	24 few days, and then a disproportionate number of mice 02:10
1 spiders, and roaches were released into Room 7 at the 02:08 2 same time. 3 Do you see that? 4 A. That's what it says, yes. 5 Q. Was that an improper thing to do in this 02:08 6 protocol that they were put into Room 7 all at the 02:08 8 in Room 7, half in Room 8? 9 A. It's not the only ones that did it that 02:08 10 Q. Was it improper for them to do this? 11 Q. Was it improper for them to do this? 12 A. It's just the it's their protocol. 13 Q. Okay. So on Pretest Day 1 for spiders, 02:10 14 A. No, not improper on them to do this? 15 Q. Was that did it that 02:08 16 Q. Was that improper? Yes or no? 17 Q. And then, in fact, on Pretest Day 3 there 02:10 18 Q. Was that improper for them to do this? 19 A. It's just the it's their protocol. 10 Q. Was that improper? Yes or no? 11 Q. Was it improper? Yes or no? 12 Q. And and on Pretest Day 1 and 3, there 02:11 13 Q. Was that improper to achieve their 15 purpose. 16 Q. Was it improper when Dr. Potter did it? 16 Q. Was it improper when Dr. Potter did it? 17 A. I think I put that in my report. 18 Q. Okay. So when they did it, it was okay; 19 Q. Okay. So when they did it, it was okay; 10 Q. Okay. Was it improper for them to 02:09 10 Q. Okay. So when they did it, it was okay; 10 Q. Okay. Was it improper for them to 02:11 19 when Dr. Potter did it, it was a problem? 20 A. Their it would have been better to 02:09 21 well, let me look at their post, their pretest. 21 Q. Okay. Was it improper the word improper is 02:11 22 Because it all comes down to 02:09 23 wherever they put them in the it really doesn't 02:09 24 matter, I think, in what chamber they put them as 02:09 25 long as in their pretest period these pests 20 O2:09 26 and pretast Day 1 for spiders, 02:10 27 A. No. 02:11 28 Let were they equal? 02:10 29 A. Yes. 02:11 20 A. Their it would have been better to 02:09 20 A. Their it would have been better to 02:09 21 A. Their it would have been better to 02:09 22 Because it all comes down to 02:09 23 I can imagine that a home si	25 Q. Okay. Now, all the all the mice, 02:08	25 in Room 7? 02:10
2 don't know. 02:10 3 Do you see that? 02:08 4 A. That's what it says, yes. 02:08 5 Q. Was that an improper thing to do in this 02:08 6 protocol that they were put into Room 7 all at the 02:08 7 same time? In other words, rather than half of them 02:08 8 in Room 7, half in Room 8? 02:08 9 A. It's not the only ones that did it that 02:08 10 way. I think Dr. Potter did his that way too. 02:08 11 Q. Was it improper for them to do this? 02:08 12 A. It's just the it's their protocol. 02:08 13 Q. Was that improper when Dr. Potter did it? 02:08 14 A. No, not improper when Dr. Potter did it? 02:08 15 A. Yes. 02:11 16 Q. Was it improper when Dr. Potter did it? 02:08 17 A. I think I put that in my report. 02:09 18 Q. Okay. So when they did it, it was a problem? 02:09 19 when Dr. Potter did it, it was a problem? 02:09 20 A. Their it would have been better to 02:09 21 well, let me look at their post, their pretest. 02:09 23 wherever they put them in the it really doesn't 02:09 24 matter, I think, in what chamber they put them as 02:09 25 long as in their pretest period these pests 02:09 2 don't know. 02:10 3 Q. Okay. So on Pretest Day 1 for spiders, 02:10 4 were they equal? 02:10 4 were they equal? 02:10 5 A. 6 and 0, 6 and 0. 02:10 6 They were not statistically equal. 02:10 8 was 10 spiders in Room 7 and 0 in Room 8; correct? 02:11 9 A. Yes. 02:11  A. They were not equal there? 02:11  A. They were not equal. 02:11  A. They were not equal there? 02:11  A. Yes. 02:11  A. Yes. 02:11  A. Yes. 02:11  A. No. 02:11  A. A. No. 02:11  A. A. No. 02:11  A. A. Again,	Page 154	Page 156
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1 something from that — that possibility. 02:11		BY MR. KOPEL: 02:14
Q. Is it possible that what they were 02:12		
3 testing is the ability of the repeller to drive the 02:1	.2 3	1 1
4 pests out 02:12	4	Q. So perhaps we're miscommunicating. 02:14
5 A. It's possible. 02:12	5	I'm talking about the release of the 02:14
6 Q of the room? 02:12	6	5 pest into the room with the repeller. 02:14
7 A. Is it possible that's what Dr. Potter was 02:1	.2 7	7 A. Okay. What's the question? 02:14
8 testing. 02:12	8	Q. In this test they released all the pests 02:14
9 MR. OSTOЛС: Objection to form. May call	02:12 9	9 into the room with the repeller rather than doing 02:14
10 for speculation as to possibilities, but go ahead. 02.	:12   10	0 50/50? 02:14
11 BY THE WITNESS: 02:12	11	A. That's what they said. 02:14
12 A. Well, Dr. Potter went further, well 02:12	2   12	Q. Was that an appropriate way to test 02:14
13 beyond what the label instructions say, and he 0	)2:12   13	3 whether it would drive the pests out of that room? 02:14
14 he his test was designed to drive to determine 0	2:12 14	A. It's not a un yes, because they had 02:14
*	02:12 15	5 pretests they had a pretest period which had 02:14
	1	5 repeller not on, and that was to give the pests an 02:14
17 there, and that goes well beyond what the claims are		7 opportunity to move freely between the chambers. 02:
18 on the in the product literature. 02:12	18	
19 BY MR. KOPEL: 02:12	19	9 it looked like at least with regards to spiders 02:14
20 Q. Okay. And I and I accept that you 02:1		and roaches by the end of the pretest they were 02:14
		l all in Room 7; correct? 02:14
-	2:12 22	
23 opportunity as you'd like to talk about it, but I 02:		3 Day 3, yes, they were all in Room 7. 02:15
11 3 3	02:12 24	
25 released into the room with the repeller. 02:11		5 was proper, but the fact that Dr. Potter released 02:15
<u> -</u>	ge 158	Page 160
1 And I believe you just testified 02:13	1	them into the room with the repeller was improper? 02:15
2 that it's possible that what they were trying to test 02:13	2	MR. OSTOJIC: Object. Mischaracterizes his 02:15
3 in this QMANN report was whether or not the repeller 02:1	13 3	3 testimony. Asked and answered and form. 02:15
4 could drive them out of that room, and I asked if 02:13	4	But I'd go ahead if you want to 02:15
5 that's possible that Dr. Potter was trying to do the 02:13	5	5 clear it up for him. 02:15
6 same thing, was trying to test the same thing? 02:13	6	5 BY THE WITNESS: 02:15
7 MR. OSTOJIC: Object to form. 02:13	7	A. I did not say and if I did, I have to 02:15
7 MR. OSTOJIC: Object to form. 02:13 8 Was there a question, or is that 02:13		7 A. I did not say and if I did, I have to 02:15 3 qualify Dr. Potter did not release them in the 02:15
•	8	
8 Was there a question, or is that 02:13	8	3 qualify Dr. Potter did not release them in the 02:15
8 Was there a question, or is that 02:13 9 just a narrative? 02:13	8 9 10	3 qualify Dr. Potter did not release them in the 02:15 3 same way that QMANN released them. He released them 02:15
8 Was there a question, or is that 02:13 9 just a narrative? 02:13 10 MR. KOPEL: Yeah, the question I asked 02:13	8 9 10 11	3 qualify Dr. Potter did not release them in the 02:15 3 same way that QMANN released them. He released them 02:15 5 in a harborage, and that harborage affected the 02:15
8 Was there a question, or is that 02:13 9 just a narrative? 02:13 10 MR. KOPEL: Yeah, the question I asked 02:13 11 I repeated what I asked. 02:13	8 9 10 11 12	qualify Dr. Potter did not release them in the 02:15 same way that QMANN released them. He released them 02:15 in a harborage, and that harborage affected the 02:15 distribution during the pretesting period for his 02:15
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	49. III. 14. II. II. II. II. II. II. II. II. II. I		- 19 - W
1	BY MR. KOPEL: 02:16	1	period did not allow them to distribute equally, so 02:18
2	Q. Yeah, and I'm just trying to understand 02:16	2	how do you correct for that? 02:18
3	if part of your criticism, separate and apart from 02:16	3	You either throw it out and start 02:18
4	the harborage, was that they were released into the 02:16	4	over because something is causing them to stay where 02:18
5	room with the repeller rather than being released 02:16	5	they are, which is what Dr. Potter did; or another 02:18
6	50/50? 02:16	6	possibility is you let the pretest run longer until 02:19
7	A. No. Because he if he had a adequate 02:16	7	they do equilibrate. 02:19
8	pretest, they would have distributed equally. 02:16	8	Q. They didn't do that here; right? 02:19
9	Q. But they 02:16	9	
10	A. Unfortunately they didn't have that. 02:16	10	·
11	Q. They didn't distribute equally here; 02:16	11	marked as Exhibit Borth 5. 02:19
	correct? 02:16	12	A. Okay. I have it. What do you want me to 02:19
13	A. No, not in one day they did, one day 02:16		look at? 02:19
1	they didn't. 02:16	14	Q. You know what. I'm sorry. I have one 02:19
15	Q. Two days they didn't; right? 02:16		more question about about that last document, 02:19
16	A. Well, yes, if you want to count Pretest 02:16		Exhibit 4, before we go on to 5. 02:19
	Day 1, yes. 02:16	17	
18	Q. Do you see from the diagram here that the 02:16		Can you see, based on this document, 02:19
i			that they were adding pests throughout the course of 02:19
l	exit area is significantly bigger than the treatment 02:17		the experiment? 02:19
i	area? 02:17	20	· · · · · · · · · · · · · · · · · · ·
21	A. I don't know if it's significantly 02:17		they added 5 spiders on Pretest Day 3 and 4; roaches 02:20
	bigger. It's bigger. 02:17		on Pretest Day 3. 02:20
23	Q. Was that was that a proper comparison 02:17	23	Q. Well, let's take a look at the roaches, 02:20
į.	given the disparate sizes of the rooms? 02:17		please; right. 02:20
25	A. I don't think that's important. 02:17 Page 162	25	So if you look at Test Day 2, we 02:20 Page 164
1	Q. So given the different sizes of the room, 02:17		have a total of 17 roaches; correct? 02:20
1	would you still expect them to distribute in absence 02:17	2	
3	of a repeller 50/50? 02:17	3	3
4	MR. OSTOJIC: Object to form. 02:17	i	roaches; correct? 02:20
5	BY THE WITNESS: 02:17	5	•
6	A. Yes, I would expect during the 3 days of 02:17	-6	Q. 19. 02:20
7	pretest that you would see a nonsignificant 02:17	7	A. Pretest Day 02:20
8	difference in the distribution between 7 - Room 7 02:17	8	Q. Nope. Test Day 2 to Test Day 3? 02:20
9	and Room 8. 02:17	9	A. Test Day 2 under roaches? 02:20
10	BY MR. KOPEL: 02:17	10	Q. Yes. Test Day 2 they had 17, Test Day 3 02:20
11	Q. Now, given the different sizes of the 02:17	11	they had 19. 02;20
12	room, why wouldn't you expect more to be in Room 8 02:17	12	MR. OSTOJIC: Object to form, foundation. 02:20
13	than Room 7? 02:17	13	BY MR. KOPEL: 02:20
14	A. I I would not because they're taking 02:17	14	Q. Do you see that? 02:20
			A. All right. Let me - I think I can look 02:20
15	their measurements once daily, and, at least for 02:18	15	11. 711 light. Det me I tamik i cata look 02.20
!	their measurements once daily, and, at least for 02:18 spiders, I don't believe they moved that fast. 02:18		at you're not talking pretest anymore. You're 02:20
!	- · · · · · · · · · · · · · · · · · · ·	16	5
16 17	spiders, I don't believe they moved that fast. 02:18	16	at you're not talking pretest anymore. You're 02:20 down in what's labeled Undergoing Test? 02:20
16 17 18	spiders, I don't believe they moved that fast. 02:18  Q. So you think that there wasn't really 02:18	16 17	at you're not talking pretest anymore. You're 02:20 down in what's labeled Undergoing Test? 02:20 Q. Yes, yes. 02:21
16 17 18	spiders, I don't believe they moved that fast. 02:18  Q. So you think that there wasn't really 02:18  adequate time for the spiders to make their way into 02:18  Room 8? 02:18	16 17 18	at you're not talking pretest anymore. You're down in what's labeled Undergoing Test?  Q. Yes, yes.  O2:21  A. Undergoing Tests 3 and 4 you said?  02:21
16 17 18 19 20	spiders, I don't believe they moved that fast. 02:18  Q. So you think that there wasn't really 02:18 adequate time for the spiders to make their way into 02:18  Room 8? 02:18  A. That could be a reason. 02:18	16 17 18 19 20	at you're not talking pretest anymore. You're down in what's labeled Undergoing Test? 02:20 Q. Yes, yes. 02:21 A. Undergoing Tests 3 and 4 you said? 02:21 Q. No, I'm looking at Days 2 and 3. 02:21
16 17 18 19 20 21	spiders, I don't believe they moved that fast. 02:18  Q. So you think that there wasn't really 02:18 adequate time for the spiders to make their way into 02:18  Room 8? 02:18  A. That could be a reason. 02:18  Q. Does that — does that suggest that there 02:18	16 17 18 19 20 21	at you're not talking pretest anymore. You're down in what's labeled Undergoing Test? 02:20 Q. Yes, yes. 02:21 A. Undergoing Tests 3 and 4 you said? 02:21 Q. No, I'm looking at Days 2 and 3. 02:21 A. 2 and 3. Okay. Undergoing Test 2, 17 02:21
16 17 18 19 20 21 22	spiders, I don't believe they moved that fast. 02:18  Q. So you think that there wasn't really 02:18 adequate time for the spiders to make their way into 02:18 Room 8? 02:18  A. That could be a reason. 02:18 Q. Does that — does that suggest that there 02:18 was a problem with the control here because they were 02:18	16 17 18 19 20 21 22	at you're not talking pretest anymore. You're down in what's labeled Undergoing Test?  Q. Yes, yes.  Q. Yes, yes.  Q. No, I'm looking at Days 2 and 3.  Q. No, I'm looking at Days 2 and 3.  Q. 2 and 3. Okay. Undergoing Test 2, 17  O2:21  total between Rooms 7 and 8; and Test Day 3, 19  O2:22
16 17 18 19 20 21 22 23	spiders, I don't believe they moved that fast. 02:18  Q. So you think that there wasn't really 02:18 adequate time for the spiders to make their way into 02:18 Room 8? 02:18  A. That could be a reason. 02:18 Q. Does that — does that suggest that there 02:18 was a problem with the control here because they were 02:18 only given 3 days? 02:18	16 17 18 19 20 21 22 23	at you're not talking pretest anymore. You're down in what's labeled Undergoing Test? 02:20  Q. Yes, yes. 02:21  A. Undergoing Tests 3 and 4 you said? 02:21  Q. No, I'm looking at Days 2 and 3. 02:21  A. 2 and 3. Okay. Undergoing Test 2, 17 02:21  total between Rooms 7 and 8; and Test Day 3, 19 02:2  total between Room 7 and 8. 02:21
16 17 18 19 20 21 22 23 24	spiders, I don't believe they moved that fast.  Q. So you think that there wasn't really 02:18 adequate time for the spiders to make their way into 02:18 Room 8? 02:18  A. That could be a reason. 02:18 Q. Does that does that suggest that there 02:18 was a problem with the control here because they were 02:18 only given 3 days? 02:18  A. Well, there there's an issue. There's 02:18	16 17 18 19 20 21 22 23 24	at you're not talking pretest anymore. You're down in what's labeled Undergoing Test? 02:20  Q. Yes, yes. 02:21  A. Undergoing Tests 3 and 4 you said? 02:21  Q. No, I'm looking at Days 2 and 3. 02:21  A. 2 and 3. Okay. Undergoing Test 2, 17 02:21 total between Rooms 7 and 8; and Test Day 3, 19 02:21 total between Room 7 and 8. 02:21  Q. It looks like they added; right? 02:21
16 17 18 19 20 21 22 23 24	spiders, I don't believe they moved that fast. 02:18  Q. So you think that there wasn't really 02:18 adequate time for the spiders to make their way into 02:18 Room 8? 02:18  A. That could be a reason. 02:18 Q. Does that — does that suggest that there 02:18 was a problem with the control here because they were 02:18 only given 3 days? 02:18	16 17 18 19 20 21 22 23	at you're not talking pretest anymore. You're down in what's labeled Undergoing Test? 02:20  Q. Yes, yes. 02:21  A. Undergoing Tests 3 and 4 you said? 02:21  Q. No, I'm looking at Days 2 and 3. 02:21  A. 2 and 3. Okay. Undergoing Test 2, 17 02:21 total between Rooms 7 and 8; and Test Day 3, 19 02:21 total between Room 7 and 8. 02:21  Q. It looks like they added; right? 02:21

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1	BY THE WITNESS: 02:21	1	Q. Well, we've got 6 rooms here; right? 02:23
2	A. 17 there was 17 one day. There were 02:21	2	A. They're yes, 1 through 6. 02:23
3	19 the next day. It appears that they added. 02:21	3	Q. In the absence of a repeller, would you 02:24
4	BY MR. KOPEL: 02:21	4	expect that there would be equal amounts in each 02:24
5	Q. If you look at Day 7, there is a total of 02:21	5	room? 02:24
6	21 roaches. 02:21	6	A. Given enough time you didn't tell me 02:24
7	Do you see that? 02:21	7	where they were introduced, but if you can be more 02:24
8	A. Yes, I do. 02:21		specific 02:24
9	Q. And that's more than they even started 02:21	9	•
	the experiment with; right? 02:21	10	*
11	A. Yes. 02:21		in answering. 02:24
		ŀ	ů
12	Q. Okay. Does any of this cause you any 02:21	12	· ·
	concern in relying on this test? 02:21		were released into Room 3 at the same time; right? 02:24
14	A. It's hard it's difficult to make sense 02:21	1	It's under testing procedures 1A? 02:24
	out of out of what they replaced and what they 02:21	15	·
16	didn't replace. 02:21	16	Q. So your null hypothesis is that 50 02:24
17	Is it a concern to me? Again, I 02:21	17	percent would stay in the Room 3, and the other 50 02:24
18	I used the numbers as they presented — as they were 02:22	18	percent would distribute themselves among the other 5 02:24
19	presented in my analysis. 02:22	19	rooms? 02:24
20	Q. Okay. I only want to ask you a few 02:22	20	A. That's the testing hypothesis for 02:24
21	questions about Exhibit 5, please, because there's a 02:22	21	chi-square, yes. 02:24
22	lot of overlap between these tests, and I'll try to 02:22	22	Q. What's the basis for that? 02:24
ŀ	go pretty quickly. 02:22	23	-
24			repeller is, or they're not in the room where the 02:24
	were used in this experiment; right? 02:22		repeller is. 02:24
23	Page 166	2.0	Page 168
1	A. No. 02:22	1	Q. Despite the fact that there are 5 times 02:24
2			as many rooms without repellers as the one with? 02:25
	you? 02:22	3	-
4		4	
5	Q. Now, for your statistical analysis did 02:22		proper to operate under the null hypothesis that they 02:25
	you assume that did you assume that 50 percent of 02:22		
0	vou assume that did you assume that 50 bercent of 02:22		would distribute themselves equally among the rooms? 02:25
	the pests would remain in Room 3 and 50 would be 02:23	7	* *
8	the pests would remain in Room 3 and 50 would be 02:23 outside of Room 37 02:23	7 8	either in the room with the repeller, or they're not 02:25
8 9	the pests would remain in Room 3 and 50 would be 02:23 outside of Room 3? 02:23  A. That was the high null hypothesis, 02:23	7 8 9	e either in the room with the repeller, or they're not 02:25 on the room with the repeller. It's testing whether 02:25
8 9	the pests would remain in Room 3 and 50 would be 02:23 outside of Room 37 02:23	7 8 9	either in the room with the repeller, or they're not 02:25
8 9	the pests would remain in Room 3 and 50 would be 02:23 outside of Room 3? 02:23  A. That was the high – null hypothesis, 02:23 yes. 02:23	7 8 9	either in the room with the repeller, or they're not 02:25 in the room with the repeller. It's testing whether 02:25 the repeller repelled. 02:25
8 9 10	the pests would remain in Room 3 and 50 would be 02:23 outside of Room 3? 02:23  A. That was the high – null hypothesis, 02:23 yes. 02:23  Q. Why? 02:23	7 8 9 10 11	either in the room with the repeller, or they're not 02:25 in the room with the repeller. It's testing whether 02:25 the repeller repelled. 02:25
8 9 10 11 12	the pests would remain in Room 3 and 50 would be 02:23 outside of Room 3? 02:23  A. That was the high null hypothesis, 02:23 yes. 02:23  Q. Why? 02:23	7 8 9 10 11 12	either in the room with the repeller, or they're not 02:25 In the room with the repeller. It's testing whether 02:25 Ithe repeller repelled. 02:25 Q. Okay. I want to talk to you, please, 02:26
8 9 10 11 12 13	the pests would remain in Room 3 and 50 would be 02:23 outside of Room 3? 02:23  A. That was the high – null hypothesis, 02:23  yes. 02:23  Q. Why? 02:23  A. Because they're either in the room where 02:23	7 8 9 10 11 12	either in the room with the repeller, or they're not 02:25  in the room with the repeller. It's testing whether 02:25  the repeller repelled. 02:25  Q. Okay. I want to talk to you, please, 02:26  about a a test that took place on July 7, 2014. 02:26  It's in the exhibit already marked as 13. 02:26
8 9 10 11 12 13	the pests would remain in Room 3 and 50 would be 02:23 outside of Room 3? 02:23  A. That was the high null hypothesis, 02:23 yes. 02:23  Q. Why? 02:23  A. Because they're either in the room where 02:23 the repeller is, or they're not in the room where the 02:23 repeller is. 02:23	7 8 9 10 11 12 13	either in the room with the repeller, or they're not 02:25  in the room with the repeller. It's testing whether 02:25  the repeller repelled. 02:25  Q. Okay. I want to talk to you, please, 02:26  about a a test that took place on July 7, 2014. 02:26  It's in the exhibit already marked as 13. 02:26
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8 9 10 11 12 13 14 15 16 17 18 19 20	the pests would remain in Room 3 and 50 would be 02:23 outside of Room 3? 02:23  A. That was the high – null hypothesis, 02:23 yes. 02:23 Q. Why? 02:23 A. Because they're either in the room where 02:23 the repeller is, or they're not in the room where the 02:23 repeller is. 02:23 Q. So despite the fact that there were 6 02:23 rooms, you think that in absence of the repeller 02:23 there might have otherwise been 50 percent in Room 3? 02:23 MR. OSTOJIC: Object to form. 02:23 BY THE WITNESS: 02:23 A. In the absence – I'm restating for 02:23	77 8 9 10 11 12 13 14 15 16 17 18 19	de either in the room with the repeller, or they're not 02:25  in the room with the repeller. It's testing whether 02:25  Q. Okay. I want to talk to you, please, 02:26  de about a — a test that took place on July 7, 2014. 02:26  It's in the exhibit already marked as 13. 02:26  Are you having a hard time 02:26  finding — 02:26  A. No. Which one? 02:26  Q. July 7, 2014 — 02:26  A. Oh, I was —  Q. The report ends with GZU002 — 02:26  A. I'm looking at the —
8 9 10 11 12 13 14 15 16 17 18 19 20 21	the pests would remain in Room 3 and 50 would be 02:23 outside of Room 3? 02:23  A. That was the high – null hypothesis, 02:23 yes. 02:23 Q. Why? 02:23 A. Because they're either in the room where 02:23 the repeller is, or they're not in the room where the 02:23 repeller is. 02:23 Q. So despite the fact that there were 6 02:23 rooms, you think that in absence of the repeller 02:23 there might have otherwise been 50 percent in Room 3? 02:23 MR. OSTOJIC: Object to form. 02:23 BY THE WITNESS: 02:23 A. In the absence – I'm restating for 02:23 myself. 02:23	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	de either in the room with the repeller, or they're not 02:25  in the room with the repeller. It's testing whether 02:25  Q. Okay. I want to talk to you, please, 02:26  de about a a test that took place on July 7, 2014. 02:26  It's in the exhibit already marked as 13. 02:26  Are you having a hard time 02:26  finding 02:26  A. No. Which one? 02:26  Q. July 7, 2014 02:26  A. Oh, I was Q. The report ends with GZU002 02:26  A. I'm looking at the Q. It's an Intertek test. 02:26
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	the pests would remain in Room 3 and 50 would be 02:23  outside of Room 3? 02:23  A. That was the high — null hypothesis, 02:23  yes. 02:23  Q. Why? 02:23  A. Because they're either in the room where 02:23  the repeller is, or they're not in the room where the 02:23  repeller is. 02:23  Q. So despite the fact that there were 6 02:23  rooms, you think that in absence of the repeller 02:23  there might have otherwise been 50 percent in Room 3? 02:23  MR. OSTOJIC: Object to form. 02:23  BY THE WITNESS: 02:23  A. In the absence — I'm restating for 02:23  myself. 02:23  BY MR. KOPEL: 02:23	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	de either in the room with the repeller, or they're not 02:25  in the room with the repeller. It's testing whether 02:25  Q. Okay. I want to talk to you, please, 02:26  de about a a test that took place on July 7, 2014. 02:26  It's in the exhibit already marked as 13. 02:26  Are you having a hard time 02:26  A. No. Which one? 02:26  Q. July 7, 2014 02:26  A. Oh, I was  Q. The report ends with GZU002 02:26  A. I'm looking at the  Q. It's an Intertek test. 02:26  A. That's that's important. Okay. 02:26
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	the pests would remain in Room 3 and 50 would be 02:23  outside of Room 3? 02:23  A. That was the high — null hypothesis, 02:23  yes. 02:23  Q. Why? 02:23  A. Because they're either in the room where 02:23  the repeller is, or they're not in the room where the 02:23  repeller is. 02:23  Q. So despite the fact that there were 6 02:23  rooms, you think that in absence of the repeller 02:23  there might have otherwise been 50 percent in Room 3? 02:23  MR. OSTOJIC: Object to form. 02:23  BY THE WITNESS: 02:23  A. In the absence — I'm restating for 02:23  myself. 02:23  BY MR. KOPEL: 02:23  BY MR. KOPEL: 02:23	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	de either in the room with the repeller, or they're not 02:25  in the room with the repeller. It's testing whether 02:25  Q. Okay. I want to talk to you, please, 02:26  de about a a test that took place on July 7, 2014. 02:26  It's in the exhibit already marked as 13. 02:26  Are you having a hard time 02:26  finding 02:26  A. No. Which one? 02:26  Q. July 7, 2014 02:26  A. Oh, I was Q. The report ends with GZU002 02:26  A. I'm looking at the Q. It's an Intertek test. 02:26  A. That's that's important. Okay. 02:26  July 7, 2014, Intertek. Yes, I have 02:27
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	the pests would remain in Room 3 and 50 would be  02:23  A. That was the high null hypothesis,  02:23  Q. Why?  02:23  A. Because they're either in the room where  02:23  the repeller is, or they're not in the room where the  02:23  Q. So despite the fact that there were 6  Q. So despite the fact that there were 6  02:23  there might have otherwise been 50 percent in Room 3?  MR. OSTOJIC: Object to form.  02:23  A. In the absence I'm restating for  02:23  MY. OSTOJIC: Object to form.  02:23  A. In the absence of the repeller  02:23  A. In the absence of a you got to reread  02:23  A. In the absence of a you got to reread  02:23	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	de either in the room with the repeller, or they're not 02:25  in the room with the repeller. It's testing whether 02:25  Q. Okay. I want to talk to you, please, 02:26  de about a — a test that took place on July 7, 2014. 02:26  It's in the exhibit already marked as 13. 02:26  Are you having a hard time 02:26  finding — 02:26  A. No. Which one? 02:26  Q. July 7, 2014 — 02:26  A. Oh, I was —  Q. The report ends with GZU002 — 02:26  A. I'm looking at the —  Q. It's an Intertek test. 02:26  A. That's — that's important. Okay. 02:27  It. 02:27
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	the pests would remain in Room 3 and 50 would be 02:23  outside of Room 3? 02:23  A. That was the high — null hypothesis, 02:23  yes. 02:23  Q. Why? 02:23  A. Because they're either in the room where 02:23  the repeller is, or they're not in the room where the 02:23  repeller is. 02:23  Q. So despite the fact that there were 6 02:23  rooms, you think that in absence of the repeller 02:23  there might have otherwise been 50 percent in Room 3? 02:23  MR. OSTOJIC: Object to form. 02:23  BY THE WITNESS: 02:23  A. In the absence — I'm restating for 02:23  myself. 02:23  BY MR. KOPEL: 02:23  BY MR. KOPEL: 02:23	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	de either in the room with the repeller, or they're not 02:25  in the room with the repeller. It's testing whether 02:25  Q. Okay. I want to talk to you, please, 02:26  de about a a test that took place on July 7, 2014. 02:26  It's in the exhibit already marked as 13. 02:26  Are you having a hard time 02:26  finding 02:26  A. No. Which one? 02:26  Q. July 7, 2014 02:26  A. Oh, I was Q. The report ends with GZU002 02:26  A. I'm looking at the Q. It's an Intertek test. 02:26  A. That's that's important. Okay. 02:26  July 7, 2014, Intertek. Yes, I have 02:27  it. 02:27

1			_	
3   a couple of the same questions again.	1	A. Yes. 02:27	1	A. Not in the true sense. 02:29
4 A. That's fine. 0.2-27 5 Q. What species of ants, spiders, and 02:27 7 A. The testers did not say. 02:27 7 P. A. The testers did not say. 02:27 9 that you had the style number, did you do any research to see – now 02:27 10 research to see what the speaker size of the style 02:27 11 number was in disk test? 02:27 12 A. Wait a mimute. Excuse me. We're on 02:27 13 July – Intertek, July 7, 2014? 02:27 15 A. The one I'm looking at has mice and rats, 02:27 16 which I'm no providing testimony. 02:27 17 Q. So there's another – there's another on 02:27 18 on the same date in that same document. 02:27 19 A. Okay. There's the second one. Okay. So 02:28 21 spiders, and roaches? 02:28 22 Again, the testers did not provide 02:28 23 that information. 02:28 24 Q. So here the style number tested on was 02:28 25 50167. 02:28 2 A. Yes. 02:28 3 Q. Okay. Did you do any research into the 02:28 4 speaker size of filis model? 02:28 5 A. Not speaker size, no. 02:28 6 Q. Did you do any research into the objective of a control of the same one he tested? 02:28 10 Q. Was this he same one he tested? 02:28 11 A. Yes. 02:29 12 Q. Okay. Did you do any research into the objective of a control of the same of the style number tested? 02:28 13 pujare still comfortable extend – basing your of 02:29 14 opinion that even Bell + Howell repellers with state: 02:29 15 outputs are effective based on this test? 02:29 16 M. NOSTOIIC: Object to form. 02:29 17 BY THE WITNESS: 02:29 18 A. Yes. 02:29 19 BY MR. KOPEL: 02:30 11 BW YMR. KOPEL: 10 02:30 12 Q. Okay. Date that information to the objective of any to the same of the style of the same one he tested? 02:28 10 Q. Okay. And this test was not replicated 02:29 11 A. Yes. 02:29 12 Q. Okay. And this test swas not replicated 02:29 13 sovience, no. 02:29 14 Q. Core of a control of the same of this test? 02:29 15 Q. Okay. And this test swas not replicated 02:29 21 Lay on the same of the style of the same of the style of the same of this test? 02:29 22 A. Not in a true sense that's commonly used 02:29 23 in sci	2	Q. Okay. I'm sorry. But I have to ask you 02:27	2	Q. Would you have relied on any of these 02:29
5 Q. What species of ants, spiders, and 02:27 of rozaches were used in this test? 02:27 or 2.4. The testers did not say, 02:27 or 2.4. The testers did not say, 02:27 or 10 research to see what the speaker size of the style or 2.27 or 11 number was in this test? 02:27 or 12 or 12 or 2.27 or 12 or 12 or 13 July − Intertek, July 7, 2014? 02:27 or 13 July − Intertek, July 7, 2014? 02:27 or 13 July − Intertek, July 7, 2014? 02:27 or 14 or 0.0 Correct. 15 A. The one I'm looking at has mice and rats, 02:27 or 16 which I'm not providing testimony, 02:27 or 18 or the same date in that same document. 02:28 or 15 the question was: Do I know the species of ants, 02:28 or 2.28 or 2.28 or 2.28 or 2.28 or 2.28 or 2.29 or 2	3	a couple of the same questions again. 02:27	3	tests in the course of your work at Dow when 02:29
6 roaches were used in this test?  7 A. The testers did not say.  9 Co.27  9 that you had the style number, did you do any research to see —now  10 research to see what the speaker size of the style  11 number was in this test?  12 A. Wait a minute. Excuse me. We're on  13 July — Intertek, July 7, 2014?  14 Q. Correct.  15 A. The one I'm looking at has mice and rats,  16 Q. 22.7  17 Q. So there's another — there's another one  17 Q. So there's another — there's another one  18 or the same date in that same document.  19 A. Okay. There's the second one. Okay. So  22 Pagain, the testers did not providing case and another — there's another one  22 Pagain, the testers did not spread to the sylee  22 Pagain, the testers did not spread to the sylee  23 dat information.  22 Pagain, the testers did not spread to the sylee  24 Q. So here the style number tested on was  25 50167.  26 Q. Did you do any research into the organization of the speaker size of this model?  27 A. Wait is the same one he tested?  28 A. Yes.  29 A. A read what Mankin said about it.  20 Q. Was this the same one he tested?  20 Q. Was this the same one he tested?  20 Q. Was this the same one he tested?  20 Q. Was this the same one he tested?  20 Q. Okay. Did you do any research into twelcher this outputs are effective based on this test?  20 Q. Okay. Was this the same one he tested?  20 Q. Okay. And all the tests that we've reviewed so  20 Q. Okay. And all the tests that we've reviewed so  20 Q. 23 Pagain the testes that we've reviewed so  20 Q. 23 Pagain the testes that we've reviewed so  20 Q. 23 Pagain the tests that we've reviewed so  20 Q. 23 Pagain the testers did not provide only research into the decrease of this model?  21 The population of the stylee  22 Pagain the testers did not provide only research into the decrease of this model?  23 THE WITNESS:  24 Q. Okay. Under what — point me to it.  25 Do you see that?  26 Q. Did you do any research into whether this  26 Q. Did you do any research into whether this  27 The wast of this model?  2	4	A. That's fine. 02:27	4	evaluating a product? 02:29
7 A. The testers did not say, 02:27	5	Q. What species of ants, spiders, and 02:27	5	A. I would. 02:29
8	6	roaches were used in this test? 02:27	6	MR. OSTOJIC: Objection. Asked and answered. 02:29
9 that you had the style number, did you do any of the style of the st	7	A. The testers did not say. 02:27	7	But go ahead. 02:30
10   research to see what the speaker size of the style   02:27   11   number was in this test?   02:27   12   2, A, Wait a minute. Excuse me. We're on   02:27   13   July - Intertek, July 7, 2014?   02:27   14   Q. Correct.   02:27   15   A. The one I'm looking at has mice and rats,   02:27   15   A. The one I'm looking at has mice and rats,   02:27   16   which I'm not providing testimony.   02:27   17   Q. So there's another — there's another one   02:27   18   O. Kay. There's the second one. Okay.   So   02:28   02:30   18   A. Okay. There's the second one. Okay.   So   02:28   02:30	8	Q. Did you do any research to see now 02:27	8	BY THE WITNESS: 02:30
11 number was in this test?   02:27   12   2.   A.   Wait a minute. Excuse me. We're on   02:27   13   July - Interest, July 7, 2014?   02:27   14   Q.   Correct.   02:27   15   A.   The one I'm looking at has mice and rats,   02:27   16   which I'm not providing testimony.   02:27   17   Q.   So there's another — there's another one   02:27   18   on the same date in that same document.   02:27   18   on the same date in that same document.   02:27   19   A.   Okay. There's the second one.   Okay.   So   02:28   21   spitors, and roaches?   02:28   22   A.   Again, the testers did not provide   02:28   23   50167.   02:28   24   Q.   So here the style number tested on was   02:28   25   50167.   02:28   25   50167.   02:28   27   A.   Yes.   02:30   27   27   27   27   28   28   A.   Yes.   02:30   27   28   29   29   29   29   29   29   29	9	that you had the style number, did you do any 02:27	9	A. I would consider them data, I don't 02:30
12   A. Wait a minute. Excuse me. We're on   02:27   13   July - Intertek, July 7, 2014?   02:27   15   A. The one I'm looking at has mice and rats,   02:27   16 which I'm not providing testimony.   02:27   16 which I'm not providing testimony.   02:27   18 on the same date in that same document.   02:27   18 on the same date in that same document.   02:27   18 on the same date in that same document.   02:27   18 on the same date in that same document.   02:27   18 on the same date in that same document.   02:27   18 on the same date in that same document.   02:27   19   A. Okay. There's the second one. Okay. So   02:28   20   00 you see that?   02:30   22:30   20   20   20   20   20   20   20	10	research to see what the speaker size of the style 02:27	10	throw out data. 02:30
13   July Intertek, July 7, 2014?   02:27   14	11	number was in this test? 02:27	11	BY MR. KOPEL: 02:30
14 Q. Correct.   O2:27	12	A. Wait a minute. Excuse me. We're on 02:27	12	Q. Okay. But but you never relied on 02:30
14 Q. Correct.   O2:27	13	July Intertek, July 7, 2014? 02:27	13	take it back. 02:30
15			14	Okay. Can you please turn to 02:30
16 which I'm not providing testimony.   02:27   17   Q. So there's another — there's another one   02:27   18   O. Hore's another — there's another one   02:27   18   O. Hore's another — there's another — the same date in that same document.   02:27   18   O. A. Okay. There's the second one. Okay. So   02:28   18   O. Okay. There's the second one. Okay. So   02:28   19   as food.   02:30   02:	15	A. The one I'm looking at has mice and rats, 02:27	15	
18	16		16	A. Yes. 02:30
19   A. Okay. There's the second one. Okay. So   02:28   20   the question was: Do I know the species of ants,   02:28   21   spiders, and roaches?   02:28   22   Again, the testers did not provide   02:28   22   that information.   02:28   23   that information.   02:28   24   Q. So here the style number tested on was   02:28   25   50167.   02:28   24   A. Yes.   02:28   25   A. Not speaker size of this model?   02:28   25   A. Not speaker size of this model?   02:28   26   Q. Did you do any research into whether this   02:28   27   A. Not speaker size, no.   02:28   28   A. Yes.   02:28   29   A. I read what Mankin said about it.   02:28   02:28   10   Q. Was this the same one he tested?   02:28   10   Q. Was this the same one he tested?   02:28   10   Q. Given that it has variable outputs,   02:29   10   Q. Okay. And this test was not replicated   02:29   10   Q. Okay. And this test was not replicated   02:29   22   A. Not in a true sense that's commonly used   02:29   24   Q. And all the tests that we've reviewed so   02:29   24   Q. And all the tests that we've reviewed so   02:29   25   But go ahead.   02:31   3   3   3   3   3   3   3   3   3	17	Q. So there's another there's another one 02:27	17	Q. Okay. 02:30
20	18	on the same date in that same document. 02:27	18	A. It says here they used granulated sugar 02:30
21   Spiders, and roaches?   02:28   Again, the testers did not provide   02:28   22   Again, the testers did not provide   02:28   23   that information.   02:28   24   Q. So here the style number tested on was   02:28   25   50167.   02:28   Page 170   25   was my mistake.   02:30   Page 172	19	A. Okay. There's the second one. Okay. So 02:28	19	as food, 02:30
22	20	the question was: Do I know the species of ants, 02:28	20	Do you see that? 02:30
23	21	spiders, and roaches? 02:28	21	MR. OSTOJIC: Objection. You looking at the 02:30
24   Q.   So here the style number tested on was   02:28   50167.   02:28	22	Again, the testers did not provide 02:28	22	picture? 02:30
25 50167.	23	that information. 02:28	23	THE WITNESS: Yeah, it 02:30
Page 170   Page 170   Page 170   Page 170   Page 172	24	Q. So here the style number tested on was 02:28	24	MR. KOPEL: I'm sorry. I meant Page 3. That 02:30
1	25	50167. 02:28	25	was my mistake. 02:30
2 A. Yes. 02:28 3 Q. Okay. Did you do any research into the 02:28 4 speaker size of this model? 02:28 5 A. Not speaker size, no. 02:28 6 Q. Did you do any research into whether this 02:28 7 model produced static or frequency or variable 02:28 8 outputs? 02:28 9 A. I read what Mankin said about it. 02:28 10 Q. Was this the same one he tested? 02:28 11 A. Yes. 02:28 12 Q. Given that it has variable outputs, 02:28 13 you're still comfortable extend basing your 02:29 14 opinion that even Bell + Howell repellers with static 02:29 15 outputs are effective based on this test? 02:29 16 MR. OSTOJIC: Object to form. 02:29 17 BY THE WITNESS: 02:29 18 A. Yes. 02:29 19 BY MR. KOPEL: 02:30 10 Q. Okay. And this test was not replicated 02:29 21 to your knowledge; was it? 02:29 22 A. No kay. Under what point me to it. 02:30 23 BY MR. KOPEL: 02:30 24 Q. Sure. It's a paragraph that starts with 02:30 25 the word "placed." 02:30 26 A. "Placed an equal amount of food and 02:30 26 A. "Placed an equal amount of food and 02:30 27 water. Used granulated sugar as food." 02:30 28 Yes, I see that. 02:30 29 Q. Okay. Was it appropriate for them to use 02:30 20 Q. Okay. Does that give you concern about 02:30 21 Leo Lin and Sam Lin who performed this testing? 02:31 21 Q. Okay. Brain the total of everything 02:31 22 Q. Okay. And this test was not replicated 02:29 23 in science, no. 02:29 24 Q. And all the tests that we've reviewed so 02:29 25 far have not been replicated; correct? 02:29 26 G. A. "Placed an equal amount of food and 02:30 27 water. Used granulated sugar as food." 02:30 29 Q. Okay. Was itappropriate for them to use 02:30 20 Q. Okay. Brain the volume of the word "placed." 02:30 21 A. No. 02:31 22 Q. Okay. Does that give you concern about 02:31 23 Leo Lin and Sam Lin who performed this testing? 02:31 24 A. No. As I said before, the counts are 02:31 25 Q. Okay. Here, too, they added new spiders, 02:31 26 Q. Okay. Here, too, they added new spiders, 02:31 27 Q. Okay. Here, too, they added new spiders, 02:31 28 Q. Okay. Here, t		Page 170		Page 172
3 Q. Okay. Did you do any research into the speaker size of this model? 02:28 4 speaker size of this model? 02:28 5 A. Not speaker size, no. 02:28 6 Q. Did you do any research into whether this 02:28 7 model produced static or frequency or variable 02:28 8 outputs? 02:28 9 A. I read what Mankin said about it. 02:28 10 Q. Was this the same one he tested? 02:28 11 A. Yes. 02:28 12 Q. Given that it has variable outputs, 02:29 13 you're still comfortable extend basing your 02:29 14 opinion that even Bell + Howell repellers with static 02:29 15 outputs are effective based on this test? 02:29 16 MR. OSTOJIC: Object to form. 02:29 17 BY THE WITNESS: 02:29 18 A. Yes. 02:29 19 BY MR. KOPEL: 02:29 10 Q. Okay. And this test was not replicated 02:29 11 to your knowledge; was it? 02:29 12 Q. Okay. And dhis test was not replicated 02:29 13 in science, no. 02:29 14 Q. And all the tests that we've reviewed so 02:29 15 far have not been replicated; correct? 02:29 16 Q. And all the tests that we've reviewed so 02:29 17 Garnal Revort Placed." 02:30 18 A. Was it aparagraph that starts with 02:30 19 A. "Placed an equal amount of food and 02:30 10 Q. Okay. Was it appropriate for them to use 02:30 10 granulated sugar as food for the spiders? 02:30 11 A. No. 02:31 12 Q. Okay. Does that give you concern about 02:30 13 Leo Lin and Sam Lin who performed this testing? 02:31 14 A. No. As I said before, the counts are 02:31 15 Q. As to their qualifications? 02:31 16 A. Yes. 02:29 17 what is important in what I used to form my opinion. 02:31 18 You know, in the total of everything 02:31 19 else, the counts of spiders and roaches and ants on 02:31 20 Q. Okay. And this test was not replicated 02:29 21 Q. Okay. Here, too, they added new spiders, 02:31 22 a. Not in a true sense that's commonly used 02:29 23 In science, no. 02:29 24 Q. And all the tests that we've reviewed so 02:29 25 But go ahead. 02:31	1	Do you see that? 02:28	1	BY THE WITNESS: 02:30
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7 model produced static or frequency or variable         02:28         7 water. Used granulated sugar as food."         02:30           8 outputs?         02:28         8         Yes, I see that.         02:30           9 A. I read what Mankin said about it.         02:28         9 Q. Okay. Was it appropriate for them to use 02:30           10 Q. Was this the same one he tested?         02:28         10 granulated sugar as food for the spiders?         02:30           11 A. Yes.         02:28         11 A. No.         02:30           12 Q. Given that it has variable outputs, opinion that even Bell + Howell repellers with static opinion that even Bell + Howell repelle	5	A. Not speaker size, no. 02:28	5	the word "placed." 02:30
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13 you're still comfortable extend basing your 02:29 14 opinion that even Bell + Howeli repellers with static 02:29 15 outputs are effective based on this test? 02:29 16 MR. OSTOJIC: Object to form. 02:29 17 BY THE WITNESS: 02:29 18 A. Yes. 02:29 19 BY MR. KOPEL: 02:29 10 Q. Okay. And this test was not replicated 02:29 11 to your knowledge; was it? 02:29 12 A. Not in a true sense that's commonly used 02:29 13 Leo Lin and Sam Lin who performed this testing? 02:31 14 A. No. 02:31 15 Q. As to their qualifications? 02:31 16 A. No. As I said before, the counts are 02:31 17 what is important in what I used to form my opinion. 02:31 18 You know, in the total of everything 02:31 19 else, the counts of spiders and roaches and ants on 02:31 20 Q. Okay. And this test was not replicated 02:29 21 Q. Okay. Here, too, they added new spiders, 02:31 22 A. Not in a true sense that's commonly used 02:29 23 in science, no. 02:29 24 Q. And all the tests that we've reviewed so 02:29 25 far have not been replicated; correct? 02:32 26 But go ahead. 02:31	11		11	
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15 outputs are effective based on this test?  16 MR. OSTOJIC: Object to form.  17 BY THE WITNESS:  18 A. Yes.  19 BY MR. KOPEL:  19 Q. Okay. And this test was not replicated 02:29  20 Q. Okay. And this test was not replicated 02:29  21 to your knowledge; was it?  22 A. Not in a true sense that's commonly used 02:29  23 in science, no.  15 Q. As to their qualifications?  16 A. No. As I said before, the counts are 02:31  17 what is important in what I used to form my opinion. 02:31  18 You know, in the total of everything 02:31  19 else, the counts of spiders and roaches and ants on 02:31  20 Q. Okay. Here, too, they added new spiders, 02:31  21 Q. Okay. Here, too, they added new spiders, 02:31  22 roaches, and ants throughout the experiment; correct? 02:31  23 MR. OSTOJIC: Objection. Misstates the 02:31  24 document.  25 But go ahead.  02:31	13	you're still comfortable extend basing your 02:29	13	Leo Lin and Sam Lin who performed this testing? 02:3
16 MR. OSTOJIC: Object to form. 17 BY THE WITNESS: 18 A. Yes. 19 BY MR. KOPEL: 19 BY MR. KOPEL: 10 Q. Okay. And this test was not replicated 02:29 20 Q. Okay. And this test was not replicated 02:29 21 to your knowledge; was it? 22 A. Not in a true sense that's commonly used 02:29 23 in science, no. 24 Q. And all the tests that we've reviewed so 02:29 25 far have not been replicated; correct? 20 Q:29 20 A. No defined a true sense that we've reviewed so 02:29 21 G. Okay. Here, too, they added new spiders, 02:31 22 A. No defined a true sense that's commonly used 02:29 23 MR. OSTOJIC: Objection. Misstates the 02:31 24 document. 25 But go ahead. 02:31  16 A. No. As I said before, the counts are 02:31  17 what is important in what I used to form my opinion. 02:31  18 You know, in the total of everything 02:31  19 else, the counts of spiders and roaches and ants on 02:31  20 Q. Okay. Here, too, they added new spiders, 02:31  21 Q. Okay. Here, too, they added new spiders, 02:31  22 roaches, and ants throughout the experiment; correct? 02:31  23 MR. OSTOJIC: Objection. Misstates the 02:31  24 document.  25 But go ahead. 02:31	14	opinion that even Bell + Howell repellers with static 02:29	14	A. No. 02:31
17 BY THE WITNESS: 02:29 18 A. Yes. 02:29 19 BY MR. KOPEL: 02:29 20 Q. Okay. And this test was not replicated 02:29 21 to your knowledge; was it? 02:29 22 A. Not in a true sense that's commonly used 02:29 23 in science, no. 02:29 24 Q. And all the tests that we've reviewed so 02:29 25 far have not been replicated; correct? 02:31 27 what is important in what I used to form my opinion. 02:31 28 You know, in the total of everything 02:31 29 else, the counts of spiders and roaches and ants on 02:31 20 Q. Okay. Here, too, they added new spiders, 02:31 21 Q. Okay. Here, too, they added new spiders, 02:31 22 roaches, and ants throughout the experiment; correct? 02:31 23 MR. OSTOJIC: Objection. Misstates the 02:31 24 document. 02:31 25 But go ahead. 02:31	15	outputs are effective based on this test? 02:29	15	Q. As to their qualifications? 02:31
18 A. Yes. 02:29 19 BY MR. KOPEL: 02:29 20 Q. Okay. And this test was not replicated 02:29 21 to your knowledge; was it? 02:29 22 A. Not in a true sense that's commonly used 02:29 23 in science, no. 02:29 24 Q. And all the tests that we've reviewed so 02:29 25 far have not been replicated; correct? 02:30  18 You know, in the total of everything 02:31  19 else, the counts of spiders and roaches and ants on 02:31  20 the different days is what's important. 02:31  21 Q. Okay. Here, too, they added new spiders, 02:31  22 roaches, and ants throughout the experiment; correct? 02:31  23 MR. OSTOJIC: Objection. Misstates the 02:31  24 document. 02:31  25 But go ahead. 02:31	16	MR. OSTOJIC: Object to form. 02:29		·
19 BY MR. KOPEL:  02:29  Q. Okay. And this test was not replicated 02:29 21 to your knowledge; was it?  02:29  A. Not in a true sense that's commonly used 02:29 23 in science, no.  02:29  Q. And all the tests that we've reviewed so 02:29 25 far have not been replicated; correct?  02:29  19 else, the counts of spiders and roaches and ants on 02:31  20 the different days is what's important.  02:31  21 Q. Okay. Here, too, they added new spiders, 02:31  22 roaches, and ants throughout the experiment; correct? 02:31  23 MR. OSTOJIC: Objection. Misstates the 02:31  24 document.  02:31  25 But go ahead.  02:31	17	BY THE WITNESS: 02:29	17	what is important in what I used to form my opinion. 02:3
20 Q. Okay. And this test was not replicated 02:29 21 to your knowledge; was it? 22 A. Not in a true sense that's commonly used 02:29 23 in science, no. 24 Q. And all the tests that we've reviewed so 02:29 25 far have not been replicated; correct? 20 the different days is what's important. 21 Q. Okay. Here, too, they added new spiders, 02:31 22 roaches, and ants throughout the experiment; correct? 02:31 23 MR. OSTOJIC: Objection. Misstates the 02:31 24 document. 25 But go ahead. 20 the different days is what's important. 21 Q. Okay. Here, too, they added new spiders, 02:31 22 roaches, and ants throughout the experiment; correct? 02:31 23 MR. OSTOJIC: Objection. Misstates the 02:31 24 document. 25 But go ahead. 26 the different days is what's important. 27 Oz.31			18	You know, in the total of everything 02:31
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22 A. Not in a true sense that's commonly used 02:29 23 in science, no. 02:29 24 Q. And all the tests that we've reviewed so 02:29 25 far have not been replicated; correct? 02:39 26 A. Not in a true sense that's commonly used 02:29 27 roaches, and ants throughout the experiment; correct? 02:31 28 MR. OSTOΛC: Objection. Misstates the 02:31 29 document. 02:31 20 But go ahead. 02:31	20	Q. Okay. And this test was not replicated 02:29	20	the different days is what's important. 02:31
23 in science, no. 02:29 23 MR. OSTOJIC: Objection. Misstates the 02:31 24 Q. And all the tests that we've reviewed so 02:29 24 document. 02:31 25 far have not been replicated; correct? 02:29 25 But go ahead. 02:31	21	to your knowledge; was it? 02:29	21	Q. Okay. Here, too, they added new spiders, 02:31
Q. And all the tests that we've reviewed so 02:29 24 document. 02:31 25 far have not been replicated; correct? 02:29 25 But go ahead. 02:31	22	A. Not in a true sense that's commonly used 02:29	22	roaches, and ants throughout the experiment; correct? 02:3
25 far have not been replicated; correct? 02:29 25 But go ahead. 02:31	23	in science, no. 02:29	23	MR. OSTOJIC: Objection. Misstates the 02:31
	24	Q. And all the tests that we've reviewed so 02:29	24	document. 02:31
Page 171 Page 173	25	1 ,	25	But go ahead. 02:31
40	L	Page 171		Page 173

1 BY THE WITNESS: 02:31	1 Q. And it's possible they're in the chamber 02:34
2 A. Throughout I don't see, but I do see 02:31	2 together at the same time that they were the 02:34
3 added new spiders, roaches, and ants next day at the 02:31	3 the spiders, roaches, and ants were affecting each 02:34
4 bottom of Table the only table they provide 02:31	4 other's movements within the chambers; correct? 02:3
5 Page 5 of 10. 02:31	5 MR. OSTOJIC: Object to form, foundation. 02:34
6 BY MR. KOPEL: 02:31	6 BY THE WITNESS: 02:34
7 Q. Were the spiders, roaches, and ants 02:31	7 A. It's possible, yes. We have no way of 02:34
8 tested together in this experiment? 02:32	8 knowing. 02:34
9 A. I don't see that. If you see it, please 02:32	9 BY MR. KOPEL: 02:34
10 point me to it. 02:32	10 Q. Well, spiders eat roaches; right? 02:34
11 Q. Sure. 02:32	11 A. Yes. 02:34
Well, if you look at the chart, 02:32	12 Q. So wouldn't you say it's pretty likely in 02:34
13 there is they report consumed food and consumed 02:32	13 that case that the spiders were affecting the 02:34
14 water. 02:32	14 movement of the roaches? 02:34
15 Do you see that? 02:32	15 A. No, I didn't say that 02:34
16 A. Yes. 02:32	16 MR. OSTOJIC: Objection to form and 02:34
17 Q. And they report one number for spiders, 02:32	17 foundation. 02:34
18 roaches, and ants. 02:32	18 BY THE WITNESS: 02:34
19 Do you see that? 02:32	19 A I said it's possible. 02:34
20 A. Yes. 02:32	20
Q. Okay. Does that seem to you likely then 02:32	21 BY MR. KOPEL: 02:34
22 that they that they were in the same chamber given 02:32	22 Q. But you don't know one way or the other; 02:34
23 that they're reporting one number for all three of 02:32	23 right?
24 them? 02:32	24 A. I can't prove it one way or the other. 02:34
A. It it could be. It's reasonable to 02:32	25 Q. Do you know one way or the other? 02:34
Page 17	Page 176
1 assume that. 02:33	1 MR. OSTOJIC: Object to form. 02:34
Q. Okay. And you would not have you 02:33	2 BY THE WITNESS: 02:34
3 would not have set up this protocol to test all three 02:33	3 A. It's possible. 02:34
4 of them in the same chamber at the same time; 02:33	4 BY MR. KOPEL: 02:34
5 correct?	5 Q. And you would not have added new pests 02:34
6 A. I would if the key question was: What's 02:33	6 during the course of the experiment; correct, if you 02:34
7 the effect of a repeller on all three pests at the 02:33	7 had written this protocol? 02:35
8 same time. 02:33	8 A. I would not have and kept the kept the 02:35
9 Q. Okay. Can you go back to the second page 02:33	9 experiment going. 02:35
10 where it says, "Test Object." 02:33	10 BY MR, KOPEL: 02:35
11 A. Yes. 02:33	11 Q. In some instances throughout these tests 02:35
12 Q. Okay. Do you see here it says, "This is 02:33	12 you we observed that even though there were no 02:35
13 to measure the efficacy of high frequency sound as a 02:33	13 pests in a chamber on a given day, there was still 02:35
	14 consumption of food or water in that chamber on that 02:35
14 pest management tool <sup>11</sup> ? 02:33	1
14 pest management tool*?       02:33         15 A. Yes, I see that.       02:33	15 day. Do you recall that? 02:35
	_
15 A. Yes, I see that. 02:33	15 day. Do you recall that? 02:35
<ul> <li>15 A. Yes, I see that. 02:33</li> <li>16 Q. Okay. Do you understand that to be the 02:33</li> </ul>	15 day. Do you recall that? 02:35 16 MR. OSTOJIC: Object to form. 02:35
15 A. Yes, I see that. 02:33 16 Q. Okay. Do you understand that to be the 02:33 17 objective? 02:33	15 day. Do you recall that? 02:35 16 MR. OSTOJIC: Object to form. 02:35 17 BY THE WITNESS: 02:35
15 A. Yes, I see that. 02:33 16 Q. Okay. Do you understand that to be the 02:33 17 objective? 02:33 18 A. Yes. 02:33	15 day. Do you recall that? 02:35 16 MR. OSTOJIC: Object to form. 02:35 17 BY THE WITNESS: 02:35 18 A. 1 could see that in the table, at least 02:35
15 A. Yes, I see that. 02:33 16 Q. Okay. Do you understand that to be the 02:33 17 objective? 02:33 18 A. Yes. 02:33 19 Q. Okay. Would you have conducted this — 02:33	15 day. Do you recall that?  16 MR. OSTOJIC: Object to form.  17 BY THE WITNESS:  18 A. I could see that in the table, at least 02:35  19 for well, what you don't know from what I can see 02:35
15 A. Yes, I see that. 02:33  16 Q. Okay. Do you understand that to be the 02:33  17 objective? 02:33  18 A. Yes. 02:33  19 Q. Okay. Would you have conducted this 02:33  20 if you had conducted the this experiment, would you 02:33	15 day. Do you recall that?  16 MR. OSTOJIC: Object to form.  17 BY THE WITNESS:  18 A. I could see that in the table, at least 02:35  19 for well, what you don't know from what I can see 02:35  20 in the table is which no water yes, 02:36
15 A. Yes, I see that. 02:33  16 Q. Okay. Do you understand that to be the 02:33  17 objective? 02:33  18 A. Yes. 02:33  19 Q. Okay. Would you have conducted this — 02:33  20 if you had conducted the this experiment, would you 02:33  21 have put all three of them in the same chamber at the 02:33	15 day. Do you recall that?  16 MR. OSTOJIC: Object to form.  17 BY THE WITNESS:  18 A. I could see that in the table, at least 02:35  19 for well, what you don't know from what I can see 02:35  20 in the table is which no water yes, 02:36  21 there's okay. Let's take an example. I'm just 02:36
15 A. Yes, I see that. 02:33 16 Q. Okay. Do you understand that to be the 02:33 17 objective? 02:33 18 A. Yes. 02:33 19 Q. Okay. Would you have conducted this — 02:33 20 if you had conducted the this experiment, would you 02:33 21 have put all three of them in the same chamber at the 02:33 22 same time? 02:34	15 day. Do you recall that?  16 MR. OSTOJIC: Object to form.  17 BY THE WITNESS:  18 A. I could see that in the table, at least 02:35  19 for well, what you don't know from what I can see 02:35  20 in the table is which no water yes, 02:36  21 there's okay. Let's take an example. I'm just 02:36  22 you know, quickly found one.  02:35
15 A. Yes, I see that. 02:33  16 Q. Okay. Do you understand that to be the 02:33  17 objective? 02:33  18 A. Yes. 02:33  19 Q. Okay. Would you have conducted this — 02:33  20 if you had conducted the this experiment, would you 02:33  21 have put all three of them in the same chamber at the 02:33  22 same time? 02:34  23 A. What I would have done is done each one 02:34	15 day. Do you recall that?  16 MR. OSTOJIC: Object to form.  17 BY THE WITNESS:  18 A. I could see that in the table, at least 02:35  19 for well, what you don't know from what I can see 02:35  20 in the table is which no water yes, 02:36  21 there's okay. Let's take an example. I'm just 02:36  22 you know, quickly found one.  102:36  23 Chamber A, consumed water Day 6.  102:35

1 water be consumed if there's no pests in the chamber. 02:36	1 BY THE WITNESS: 02:54
2 And that's a good question, which is 02:36	2 A. I would not have relied on those studies 02:54
3 why I did not put weight on consumed food or consumed 02:36	3 solely to fulfill my obligation to Dow. 02:54
4 water in any of these tests, because it's the 02:36	4 BY MR. KOPEL: 02:54
5 measurement of such is so variable. 02:36	5 Q. Why not? 02;54
6 There's so many variables that can 02:36	6 A. Because they are well, for the reasons 02:54
7 creep into the measurement of water. Evaporation, 02:36	7 we pointed out. They weren't they could have been 02:54
8 did they use sponges, did they pick up the sponge and 02:37	8 done better. They could have been or else you 02:54
9 squeeze it a little more in one than the other. 02:37	9 have to have other tests that are done, replicated, 02:54
There's just too many ways that you 02:37	10 there's a control, the species. 02:54
11 can get bad data, so 1 did not use I did not use 02:37	11 I mean for Dow's purposes, this I 02:54
12 the food and water. I saw it, I considered it, and I 02:37	12 would not use these data to make a commercialization 02:54
13 decided that it would be best just to rely on the 02:37	13 decision on, but I wouldn't discount them either. 02:54
14 very easy count the insects. 02:37	14 I've said that, and I want to make 02:55
15 MR, KOPEL; Let's take a break. 02:37	15 sure you understand that, I don't throw data out. 02:55
16 THE VIDEOGRAPHER: The time is now 2:39. 02:37	16 So sole the solely, no. In 02:55
17 We're off the record. 02:37	
18 (WHEREUPON, a recess was 02:52	18 that I can find, they're part of the package. 02:55
19 had.) 02:52	19 Q. Would the totality of the data you've 02:55
THE VIDEOGRAPHER: The time is now 2:54 p.m. 02:52	20 seen on the effectiveness of the Bell + Howell 02:55
This is the beginning of Media 4. 02:52	21 repellers, would the totality of that data have been 02:55
We're back on the record. 02:52	22 sufficient for you to commercialize this product for 02:55
23 BY MR. KOPEL: 02:52	23 use in residences with Dow? 02:55
Q. Dr. Borth, earlier we and I apologize. 02:52	24 MR. OSTOЛС: Object to form, foundation, and 02:55
25 I've got a candy in my mouth, so let me know if I'm 02:52	25 irrelevant. 02:55
Page 178	Page 180
1 not clear. 02:52	1 But go ahead. 02:55
2 Earlier we discussed, you know, that 02:52	2 BY THE WITNESS: 02:55
3 Dow had rigorous standards when evaluating efficacy 02:52	3 A. Well, it's difficult to say because 02:55
4 of insecticides, that companies differ in terms of 02:52	4 different as I said before, business people are 02:55
5 the standards required. 02:52	5 involved in the decisionmaking at Dow, 02:55
6 Do you recall that? 02:53	6 If the business leaders saw the data 02:55
7 A. Yes, words to that effect. I don't know 02:53	7 and agreed that it was sufficient to back up the 02:56
8 that I used the word standards, but, yes, I recall 02:53	8 claims on the labels, they might have. 02:56
9 the conversation. 02:53	9 Q. Was it and, as I understood it, it was 02:56
10 Q. Okay. In the course of your work at Dow, 02:53	10 years job to make to make those determinations; year 07:56
11 would you have relied upon the five solely upon 02:53	10 your job to make to make these determinations; was 02:56
	11 it not? 02:56
12 the five studies we just examined, that is the five 02:53	
12 the five studies we just examined, that is the five 02:53 13 Chinese studies of the Bell + Howell repellers in 02:53	11 it not? 02:56
1	11 it not? 02:56 12 A. That was one of many. 02:56
13 Chinese studies of the Bell + Howell repellers in 02:53	11 it not? 02:56 12 A. That was one of many. 02:56 13 Q. Okay. 02:56
13 Chinese studies of the Bell + Howell repellers in 02:53 14 determining that a product was effective? 02:53	11 it not? 02:56 12 A. That was one of many. 02:56 13 Q. Okay. 02:56 14 A. But my my opinion carried a lot of 02:56
13 Chinese studies of the Bell + Howell repellers in 02:53 14 determining that a product was effective? 02:53 15 You know what. Let me restate the 02:53	11 it not? 02:56  12 A. That was one of many. 02:56  13 Q. Okay. 02:56  14 A. But my my opinion carried a lot of 02:56  15 weight. 02:56
13 Chinese studies of the Bell + Howell repellers in 02:53 14 determining that a product was effective? 02:53 15 You know what. Let me restate the 02:53 16 question, okay? 02:53	11 it not? 02:56  12 A. That was one of many. 02:56  13 Q. Okay. 02:56  14 A. But my my opinion carried a lot of 02:56  15 weight. 02:56  16 Q. Okay. As to your own purposes, would you 02:56  17 have relied on the totality of the data you've seen 02:56
13 Chinese studies of the Bell + Howell repellers in 02:53 14 determining that a product was effective? 02:53 15 You know what. Let me restate the 02:53 16 question, okay? 02:53 17 In the course of your work at Dow, 02:53 18 would you have relied on the five Chinese studies 02:53	11 it not? 02:56  12 A. That was one of many. 02:56  13 Q. Okay. 02:56  14 A. But my my opinion carried a lot of 02:56  15 weight. 02:56  16 Q. Okay. As to your own purposes, would you 02:56  17 have relied on the totality of the data you've seen 02:56  18 on Bell + Howell repellers to go forward with the 02:56
13 Chinese studies of the Bell + Howell repellers in 02:53 14 determining that a product was effective? 02:53 15 You know what. Let me restate the 02:53 16 question, okay? 02:53 17 In the course of your work at Dow, 02:53 18 would you have relied on the five Chinese studies 02:53 19 that we just discussed in making a determination that 02:53	11 it not? 02:56  12 A. That was one of many. 02:56  13 Q. Okay. 02:56  14 A. But my my opinion carried a lot of 02:56  15 weight. 02:56  16 Q. Okay. As to your own purposes, would you 02:56  17 have relied on the totality of the data you've seen 02:56  18 on Bell + Howell repellers to go forward with the 02:56  19 commercialization of the product at Dow? 02:56
13 Chinese studies of the Bell + Howell repellers in 02:53  14 determining that a product was effective? 02:53  15 You know what. Let me restate the 02:53  16 question, okay? 02:53  17 In the course of your work at Dow, 02:53  18 would you have relied on the five Chinese studies 02:53  19 that we just discussed in making a determination that 02:53  20 the product would be effective inside people's 02:53	11 it not? 02:56  12 A. That was one of many. 02:56  13 Q. Okay. 02:56  14 A. But my my opinion carried a lot of 02:56  15 weight. 02:56  16 Q. Okay. As to your own purposes, would you 02:56  17 have relied on the totality of the data you've seen 02:56  18 on Bell + Howell repellers to go forward with the 02:56  19 commercialization of the product at Dow? 02:56  20 MR. OSTOJIC: Object. Same objections as 02:56
13 Chinese studies of the Bell + Howell repellers in 02:53  14 determining that a product was effective? 02:53  15 You know what. Let me restate the 02:53  16 question, okay? 02:53  17 In the course of your work at Dow, 02:53  18 would you have relied on the five Chinese studies 02:53  19 that we just discussed in making a determination that 02:53  20 the product would be effective inside people's 02:53  21 residences? 02:53	11 it not? 02:56  12 A. That was one of many. 02:56  13 Q. Okay. 02:56  14 A. But my my opinion carried a lot of 02:56  15 weight. 02:56  16 Q. Okay. As to your own purposes, would you 02:56  17 have relied on the totality of the data you've seen 02:56  18 on Bell + Howell repellers to go forward with the 02:56  19 commercialization of the product at Dow? 02:56  20 MR. OSTOJIC: Object. Same objections as 02:56  21 before. 02:56
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13 Chinese studies of the Bell + Howell repellers in 02:53  14 determining that a product was effective? 02:53  15 You know what. Let me restate the 02:53  16 question, okay? 02:53  17 In the course of your work at Dow, 02:53  18 would you have relied on the five Chinese studies 02:53  19 that we just discussed in making a determination that 02:53  20 the product would be effective inside people's 02:53  21 residences? 02:53  22 MR. OSTOJIC: Object to form, foundation. 02:53  23 To the extent you can answer, go 02:54  24 ahead. 02:54	11 it not? 02:56  12 A. That was one of many. 02:56  13 Q. Okay. 02:56  14 A. But my my opinion carried a lot of 02:56  15 weight. 02:56  16 Q. Okay. As to your own purposes, would you 02:56  17 have relied on the totality of the data you've seen 02:56  18 on Bell + Howell repellers to go forward with the 02:56  19 commercialization of the product at Dow? 02:56  20 MR. OSTOJIC: Object. Same objections as 02:56  21 before. 02:56  22 THE WITNESS: As a Dow all right. I have 02:56  23 to ask you to read it back because I think you said 02:56  24 at the end as a Dow employee, so that's 02:56
13 Chinese studies of the Bell + Howell repellers in 02:53 14 determining that a product was effective? 02:53 15 You know what. Let me restate the 02:53 16 question, okay? 02:53 17 In the course of your work at Dow, 02:53 18 would you have relied on the five Chinese studies 02:53 19 that we just discussed in making a determination that 02:53 20 the product would be effective inside people's 02:53 21 residences? 02:53 22 MR. OSTOJIC: Object to form, foundation. 02:53 23 To the extent you can answer, go 02:54	11 it not? 02:56  12 A. That was one of many. 02:56  13 Q. Okay. 02:56  14 A. But my my opinion carried a lot of 02:56  15 weight. 02:56  16 Q. Okay. As to your own purposes, would you 02:56  17 have relied on the totality of the data you've seen 02:56  18 on Bell + Howell repellers to go forward with the 02:56  19 commercialization of the product at Dow? 02:56  20 MR. OSTOJIC: Object. Same objections as 02:56  21 before. 02:56  22 THE WITNESS: As a Dow all right. I have 02:56  23 to ask you to read it back because I think you said 02:56

1		1	
			peer-reviewed journals that were not published under 02:59
	Bell + Howell employee, a Dow employee. 02:50		the auspices of ESA, the Entomological Society of 02:59
3	•		3 America. 02:59
	let's 02:56	4	<b>.</b>
5	_		5 please mark as Exhibit 7 an Expert Disclosure in the 03:00
6	1		5 case of Deborah Galoski, Plaintiff, versus Stanley 03:00
	it back, please. 02:56		Black & Decker, Inc., et al., Defendants. 03:00
8	•	8	` ' '
9		9	document was marked Borth
10	3	10	Exhibit 7 for
11	BY THE WITNESS: 02:57	11	identification.) 03:00
12	A. All right. For my own purposes, what do 02:57	12	2 BY MR. KOPEL: 03:00
	you mean by that? 02:57	13	Q. Dr. Borth, do you have Exhibit 7? 03:00
14	BY MR. KOPEL: 02:57	14	A. Yes. 03:00
15	·	15	Q. Have you seen it before? 03:00
16	professional obligations at Dow. 02:57	16	6 A. Yes. 03:01
17	A. Okay. 02:57	17	7 Q. What is it? 03:01
18		18	A. Defendant's Expert Disclosure Deborah 03:01
19	Q. Can you please turn to your initial 02:57	19	Galoski, Plaintiff, v. Stanley Black & Decker, Inc., 03:01
20	report at Page 8? 02:57	20	Defendants. It's it's authored by me, prepared by 03:01
21	A. Okay. 02:57	21	Dr. Paul W. Borth Ento-Centric Consulting on 03:01
22	Q. I'm looking at Opinion 5 and the first 02:58	22	2 January 12, 2017. 03:01
23	sentence. 02:58	23	Q. Is this this is your expert report in 03:01
24	A. Oh, sorry. I'm on the wrong one again. 02:58	24	the Black & Decker case? 03:01
25	I pulled the rebuttal. 02:58	25	5 A. Yes. 03:01
	Page 182	2	Page 184
1	Q. That's fine. Let me know when you're 02:58	1	Q. Okay. And I see here a numbered list of 03:01
2	ready. 02:58	2	? references. 03:01
3	A. Page 8. 02:58	3	B Do you see that? 03:01
4	3 1	4	4 A, Yes, 03:01
5	Q. Here it says, "It is my opinion that if a 02:58	5	Q. Okay. And this these references 03:01
	scientist wishes to publish research on entomological 02:	58 6	6 contain several peer-reviewed publications concerning 03:01
	topics, he/she would do so in the journals of the 02:58	7	7 the effects of ultrasonic technology; correct? 03:02
7	topics, he/she would do so in the journals of the 02:58 most logical and preeminent scientific society where 02:		<del></del>
7 8	-	58 8	3 A. Yes. 03:02
7 8 9	most logical and preeminent scientific society where 02:	58 8 58 9	3 A. Yes. 03:02
7 8 9 10	most logical and preeminent scientific society where 02:: entomological research is easily published and found, 02: those of the ESA." 02:58	58 8 58 9	A. Yes. 03:02  Q. And many of these references were not 03:02  d cited in your expert reports in this case; correct? 03:02
7 8 9 10	most logical and preeminent scientific society where 02:: entomological research is easily published and found, 02: those of the ESA." 02:58  A. Yes. 02:58	58 8 58 9 10	A. Yes. 03:02  Q. And many of these references were not 03:02  died in your expert reports in this case; correct? 03:02  A. In the Hart-Bueno case, correct. 03:02
7 8 9 10 11 12	most logical and preeminent scientific society where 02:39 entomological research is easily published and found, 02:40 those of the ESA." 02:58  A. Yes. 02:58  Q. "Under this opinion I conclude that there 02:58 is no more recent journal publication of the effects 02:58	58 8 58 9 10 11 12	A. Yes. 03:02  Q. And many of these references were not 03:02  died in your expert reports in this case; correct? 03:02  A. In the Hart-Bueno case, correct. 03:02
7 8 9 10 11 12	most logical and preeminent scientific society where 02:: entomological research is easily published and found, 02: those of the ESA." 02:58  A. Yes. 02:58 Q. "Under this opinion I conclude that there 02:58	58 8 58 9 10 11 12 13	A. Yes. 03:02  Q. And many of these references were not 03:02  died in your expert reports in this case; correct? 03:02  A. In the Hart-Bueno case, correct. 03:02  Q. And, in fact, several of these studies 03:03
7 8 9 10 11 12 13	most logical and preeminent scientific society where 02:39 entomological research is easily published and found, 02:40 those of the ESA." 02:58  A. Yes. 02:58  Q. "Under this opinion I conclude that there 02:58 is no more recent journal publication of the effects 02:58	58 8 58 9 10 11 12 13	A. Yes. 03:02  Q. And many of these references were not 03:02  Q. Cotted in your expert reports in this case; correct? 03:02  A. In the Hart-Bueno case, correct. 03:02  Q. And, in fact, several of these studies 03:03  Were published after the studies you cited in the 03:03  Hart-Bueno report; correct? 03:03
7 8 9 10 11 12 13 14	emost logical and preeminent scientific society where 02:39 entomological research is easily published and found, 02:40 those of the ESA." 02:58  A. Yes. 02:58  Q. "Under this opinion I conclude that there 02:58 is no more recent journal publication of the effects 02:58 of ultrasound on roaches, ants, spiders or spiders 02:58 than those cited and referenced in this disclosure." 02:59	58 8 58 9 10 11 12 13 14	A. Yes. 03:02  Q. And many of these references were not 03:02  died in your expert reports in this case; correct? 03:02  A. In the Hart-Bueno case, correct. 03:02  Q. And, in fact, several of these studies 03:03  were published after the studies you cited in the 03:03  Hart-Bueno report; correct? 03:03
7 8 9 10 11 13 14 15	most logical and preeminent scientific society where 02:: entomological research is easily published and found, 02: those of the ESA." 02:58  A. Yes. 02:58  Q. "Under this opinion I conclude that there 02:58 is no more recent journal publication of the effects 02:58 of ultrasound on roaches, ants, spiders or spiders 02:58 than those cited and referenced in this disclosure." 02:59 Do you see that? 02:59	58 8 58 9 10 11 12 13 14	A. Yes. 03:02  Q. And many of these references were not 03:02  died in your expert reports in this case; correct? 03:02  A. In the Hart-Bueno case, correct. 03:02  Q. And, in fact, several of these studies 03:03  were published after the studies you cited in the 03:03  Hart-Bueno report; correct? 03:03  MR. OSTOJIC: Object to form. 03:03  BY THE WITNESS: 03:03
7 8 9 10 11 13 14 15 16	most logical and preeminent scientific society where 02:3 entomological research is easily published and found, 02:4 those of the ESA." 02:58  A. Yes. 02:58  Q. "Under this opinion I conclude that there 02:58 is no more recent journal publication of the effects 02:58 of ultrasound on roaches, ants, spiders or spiders 02:58 than those cited and referenced in this disclosure." 02:59  Do you see that? 02:59  A. Yes. 02:59	58 8 58 9 10 11 12 13 14 15 16	A. Yes. 03:02  Q. And many of these references were not 03:02  died in your expert reports in this case; correct? 03:02  A. In the Hart-Bueno case, correct. 03:02  Q. And, in fact, several of these studies 03:03  were published after the studies you cited in the 03:03  Hart-Bueno report; correct? 03:03  MR. OSTOJIC: Object to form. 03:03  BY THE WITNESS: 03:03
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7 8 9 10 11 12 13 14 15 16 17 18	most logical and preeminent scientific society where 02:: entomological research is easily published and found, 02: those of the ESA." 02:58  A. Yes. 02:58  Q. "Under this opinion I conclude that there 02:58 is no more recent journal publication of the effects 02:58 of ultrasound on roaches, ants, spiders or spiders 02:58 than those cited and referenced in this disclosure." 02:59 Do you see that? 02:59 A. Yes. 02:59 Q. Is now that you've do you still 02:59 contend that this statement is accurate? 02:59	58 8 58 9 10 11 12 13 14 15 16 17	A. Yes. 03:02  Q. And many of these references were not 03:02  Q. Cotted in your expert reports in this case; correct? 03:02  A. In the Hart-Bueno case, correct. 03:02  Q. And, in fact, several of these studies 03:03  B. Were published after the studies you cited in the 03:03  Hart-Bueno report; correct? 03:03  MR. OSTOJIC: Object to form. 03:03  BY THE WITNESS: 03:03  A. They could be. I'd have to look at 03:03  BY MR. KOPEL: 03:03
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I Q. Yes, that's what I said. 03:04	1 in between them. Is that right or am I confused? 03:07
A. I do not think it was published in the 03:04	2 A. And they had them in both it appears 03:07
3 peer-reviewed literature or in a journal or any 03:04	3 with the squiggly lines there that ultrasonic 03:07
4 publication available to the public. 03:04	4 placement locators were in on a shelf in each 03:07
5 I believe that that was part of the 03:04	5 in Room 1 and in Room 2 per Figure 1. 03:07
6 confidential data that were sent to me by counsel for 03:04	6 Q. Right. 03:08
7 the defendants in that case. 03:05	7 Now, do you see Table 1 at the 03:08
8 Q. Okay. All right. Have you are you 03:05	8 bottom of this page? 03:08
9 familiar with all the documents you've listed in this 03:05	9 A. Yes. 03:08
10 table of references in your Black & Decker report? 03:05	10 Q. Okay, And Table 1 reports frequency and 03:08
11 A. To some level, yes. 03:05	11 decibel levels of the devices tested; correct? 03:08
12 Q. You've read them? 03:05	12 A. Yes. 03:08
13 A. Yes. Because it says, "The following 03:05	13 Q. And several of these frequencies and 03:08
14 reference materials were used in preparing this 03:05	14 decibels are within the same range as those found in 03:08
15 report." 03:05	15 the Bell + Howell devices; correct? 03:09
16 MR, KOPEL: Okay. You can put that that 03:05	16 A. I'd have to look. They might be. 03:09
	17 Q. And I'll represent to you that, according 03:09
, , , ,	18 to Dr. Mankin's findings, Bell + Howell was between 03:09
1	19 36 and 40 kilohertz and 88 and 99 decibels? 03:09
19 please mark as Exhibit 8 a study titled, "Efficacy of 03:05	
20 Ultrasound for German Cockroach and Oriental Rat 03:05	,
21 Flea." 03:06	-
22 (Whereupon, a certain 03:06	Q. Oh, well, that was a waste of a couple 03:11
23 document was marked Borth	23 minutes. 03:11
24 Exhibit 8 for	24 A. I'm sorry. 03:11
25 identification.) 03:06 Page 186	25 Q. Yes, my question is: If you're looking 03:11 Page 188
1 BY MR. KOPEL: 03:06	1 at Table 1, do you see that many of these devices use 03:11
Q. Do you have Exhibit 8? 03:06	2 the same frequency and decibel levels as the 03:11
3 A. I do. 03:06	3 Bell + Howell devices? 03:12
4 Q. Have you seen it before? 03:06	4 MR. OSTOJIC: Object to form and foundation. 03:12
5 A. Yes, I have. 03:06	5 BY THE WITNESS: 03:12
5 A. Yes, I have. 03:06 6 Q. What is it? 03:06	5 BY THE WITNESS: 03:12 6 A. Then you went on to talk about Mankin, 03:12
5 A. Yes, I have. 03:06	5 BY THE WITNESS: 03:12 6 A. Then you went on to talk about Mankin, 03:12 7 and I thought that was the end of the conversation. 03:12
5 A. Yes, I have. 03:06 6 Q. What is it? 03:06	5 BY THE WITNESS: 03:12 6 A. Then you went on to talk about Mankin, 03:12 7 and I thought that was the end of the conversation. 03:12 8 BY MR. KOPEL: 03:12
5 A. Yes, I have. 03:06 6 Q. What is it? 03:06 7 A. It's an article written by Philip 03:06 8 Koehler, Richard Patterson and J.C. Webb entitled, 03:06 9 "Efficacy of Ultrasound for German Cockroach and 03:06	5 BY THE WITNESS: 03:12 6 A. Then you went on to talk about Mankin, 03:12 7 and I thought that was the end of the conversation. 03:12 8 BY MR. KOPEL: 03:12 9 Q. Sure. Well, that's my question. 03:12
5 A. Yes, I have. 03:06 6 Q. What is it? 03:06 7 A. It's an article written by Philip 03:06 8 Koehler, Richard Patterson and J.C. Webb entitled, 03:06	5 BY THE WITNESS: 03:12 6 A. Then you went on to talk about Mankin, 03:12 7 and I thought that was the end of the conversation. 03:12 8 BY MR. KOPEL: 03:12
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5 A. Yes, I have. 03:06 6 Q. What is it? 03:06 7 A. It's an article written by Philip 03:06 8 Koehler, Richard Patterson and J.C. Webb entitled, 03:06 9 "Efficacy of Ultrasound for German Cockroach and 03:06 10 Oriental Rat Flea Control," published in the 03:06 11 Entomological Society of America's Journal of 03:06	5 BY THE WITNESS: 03:12 6 A. Then you went on to talk about Mankin, 03:12 7 and I thought that was the end of the conversation. 03:12 8 BY MR. KOPEL: 03:12 9 Q. Sure. Well, that's my question. 03:12 10 A. Which is what, again? Sorry. 03:12 11 Q. All right. Do you see, based on Table 1, 03:12
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5 A. Yes, I have. 03:06 6 Q. What is it? 03:06 7 A. It's an article written by Philip 03:06 8 Koehler, Richard Patterson and J.C. Webb entitled, 03:06 9 "Efficacy of Ultrasound for German Cockroach and 03:06 10 Oriental Rat Flea Control," published in the 03:06 11 Entomological Society of America's Journal of 03:06 12 Economic Entomologic. 03:06 13 Q. And this is a peer-reviewed publication; 03:07 14 correct? 03:07	5 BY THE WITNESS: 03:12 6 A. Then you went on to talk about Mankin, 03:12 7 and I thought that was the end of the conversation. 03:12 8 BY MR. KOPEL: 03:12 9 Q. Sure. Well, that's my question. 03:12 10 A. Which is what, again? Sorry. 03:12 11 Q. All right. Do you see, based on Table 1, 03:12 12 that many of the devices tested used comparable 03:12 13 frequency and decibel levels to the Bell + Howell 03:12 14 devices, which, according to Dr. Mankin's testing, 03:12
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5 A. Yes, I have. 03:06 6 Q. What is it? 03:06 7 A. It's an article written by Philip 03:06 8 Koehler, Richard Patterson and J.C. Webb entitled, 03:06 9 "Efficacy of Ultrasound for German Cockroach and 03:06 10 Oriental Rat Flea Control," published in the 03:06 11 Entomological Society of America's Journal of 03:06 12 Economic Entomologic. 03:06 13 Q. And this is a peer-reviewed publication; 03:07 14 correct? 03:07 15 A. Correct. 03:07 16 Q. Can you please turn to the second page of 03:07 17 this study? 03:07 18 A. Page 1028. 03:07 19 Q. That's correct, yes. 03:07 20 Okay. So the setup in the study 03:07 21 used a corridor. 03:07 22 Do you see that? 03:07	5 BY THE WITNESS:  03:12  6 A. Then you went on to talk about Mankin, 03:12  7 and I thought that was the end of the conversation. 03:12  8 BY MR. KOPEL:  9 Q. Sure. Well, that's my question. 03:12  10 A. Which is what, again? Sorry. 03:12  11 Q. All right. Do you see, based on Table 1, 03:12  12 that many of the devices tested used comparable 03:12  13 frequency and decibel levels to the Bell + Howell 03:12  14 devices, which, according to Dr. Mankin's testing, 03:12  15 bear a frequency of 36 to 40 kilohertz and 88 to 99 03:12  16 decibels?  03:12  17 MR. OSTOJIC: Object to form.  03:12  18 Go ahead.  03:12  19 BY THE WITNESS:  03:12  20 A. I say yes to the decibels, not 03:12  21 remember — recalling how far Mankin measured the 03:12
5 A. Yes, I have. 03:06 6 Q. What is it? 03:06 7 A. It's an article written by Philip 03:06 8 Koehler, Richard Patterson and J.C. Webb entitled, 03:06 9 "Efficacy of Ultrasound for German Cockroach and 03:06 10 Oriental Rat Flea Control," published in the 03:06 11 Entomological Society of America's Journal of 03:06 12 Economic Entomologic. 03:06 13 Q. And this is a peer-reviewed publication; 03:07 14 correct? 03:07 15 A. Correct. 03:07 16 Q. Can you please turn to the second page of 03:07 17 this study? 03:07 18 A. Page 1028. 03:07 19 Q. That's correct, yes. 03:07 20 Okay. So the setup in the study 03:07 21 used a corridor. 03:07 22 Do you see that? 03:07 23 A. Corridor between Room 1 and Room 2, yes. 03:07	5 BY THE WITNESS:  6 A. Then you went on to talk about Mankin, 03:12 7 and I thought that was the end of the conversation. 03:12 8 BY MR. KOPEL: 9 Q. Sure. Well, that's my question. 03:12 10 A. Which is what, again? Sorry. 03:12 11 Q. All right. Do you see, based on Table 1, 03:12 12 that many of the devices tested used comparable 03:12 13 frequency and decibel levels to the Bell + Howell 03:12 14 devices, which, according to Dr. Mankin's testing, 03:12 15 bear a frequency of 36 to 40 kilohertz and 88 to 99 03:12 16 decibels? 17 MR. OSTOJIC: Object to form. 03:12 18 Go ahead. 03:12 19 BY THE WITNESS: 03:12 20 A. I say yes to the decibels, not 03:12 21 remember recalling how far Mankin measured the 03:12 22 decibel level, but the numbers that you represent, 88 03:13 23 to 99, that's within the range of what Koehler 03:13
5 A. Yes, I have. 03:06 6 Q. What is it? 03:06 7 A. It's an article written by Philip 03:06 8 Koehler, Richard Patterson and J.C. Webb entitled, 03:06 9 "Efficacy of Ultrasound for German Cockroach and 03:06 10 Oriental Rat Flea Control," published in the 03:06 11 Entomological Society of America's Journal of 03:06 12 Economic Entomologic. 03:06 13 Q. And this is a peer-reviewed publication; 03:07 14 correct? 03:07 15 A. Correct. 03:07 16 Q. Can you please turn to the second page of 03:07 17 this study? 03:07 18 A. Page 1028. 03:07 19 Q. That's correct, yes. 03:07 20 Okay. So the setup in the study 03:07 21 used a corridor. 03:07 22 Do you see that? 03:07	5 BY THE WITNESS: 03:12 6 A. Then you went on to talk about Mankin, 03:12 7 and I thought that was the end of the conversation. 03:12 8 BY MR. KOPEL: 03:12 9 Q. Sure. Well, that's my question. 03:12 10 A. Which is what, again? Sorry. 03:12 11 Q. All right. Do you see, based on Table 1, 03:12 12 that many of the devices tested used comparable 03:12 13 frequency and decibel levels to the Bell + Howell 03:12 14 devices, which, according to Dr. Mankin's testing, 03:12 15 bear a frequency of 36 to 40 kilohertz and 88 to 99 03:12 16 decibels? 03:12 17 MR. OSTOJIC: Object to form. 03:12 18 Go ahead. 03:12 19 BY THE WITNESS: 03:12 20 A. I say yes to the decibels, not 03:12 21 remember recalling how far Mankin measured the 03:12 22 decibel level, but the numbers that you represent, 88 03:13 23 to 99, that's within the range of what Koehler 03:13

1 representing 36 to 40 kilohertz I believe. 03:13	1 water, and harborage (10 by 60 cm rolled cardboard) 03:16
2 Under the high frequency one, I'd 03:13	2 were placed in the corners of each room." 03:16
3 say that's within the range generally; high frequency 03:13	3 A. Yes, you're right. You're right. 03:16
4 two, with few exceptions is within the range; but low 03:13	4 Q. Okay. And okay. If you look at the 03:16
5 frequency is is not in the range. 03:13	5 right-hand column here, second paragraph, it 03:16
6 Q. Okay. And can you just take a quick 03:13	6 describes that the ultrasound device was first placed 03:16
7 look, please, on Page 1029, the first paragraph on 03:13	7 in Room 1 and then in Room 2. 03:16
8 the right side, last sentence. 03:13	8 Do you see that? 03:16
9 It it mentions that devices added 03:13	9 A. Yes. 03;16
10 a low-frequency sound to alert the owner that the 03:13	10 Q. Okay. So in terms of that diagram, do 03:16
11 device was operational? 03:14	11 you now understand that the placement of the repeller 03:16
12 Do you see that? 03:14	12 was only in one room at a time? 03:16
13 A. Oh, up there, yes. Yes, yes I see it. 03:14	13 A. It seems so from that, He doesn't say 03:16
Q. Okay. So you understand, based on that, 03:14	14 how much time, you know, was was how much time 03:16
15 the low-frequency sound was not really added for the 03:14	15 there was between the placement of the two, but it 03:16
• •	
* * * * * * * * * * * * * * * * * * * *	16 appears that's to be yeah, to be true. 03:17
- · · · - · · · · · · · · · · · · · · ·	17 Q. Okay. So so this test was similar in 03:17
18 Q rather it was 03:14	18 many ways to tests run the Chinese tests in 03:17
MR. OSTOJIC: Object to the form, foundation. 03:14	19 Bell + Howell repellers and run by i2L in that there 03:17
20 The document speaks for itself, and you're asking him 03:14	20 was a treatment area, an escape area, and a corridor 03:17
21 to read just the one sentence I guess interpret 03:14	21 in between them; correct? 03:17
22 just that singular sentence. 03:14	22 MR. OSTOJIC: Object to the form. 03:17
23 BY MR. KOPEL: 03:14	23 But go ahead. 03:17
Q. Okay. Did you hear my question? 03:14	24 BY THE WITNESS: 03:17
25 A. I did. 03:14	25 A. At a gross level, yes. 03:17
Page 190	0 Page 19
1 Q. Okay. Is it your understanding, based on 03:14	1 BY MR. KOPEL: 03:17
2 that sentence, that the low-frequency portion was 03:14	2 Q. Okay. Was it was it improper for 03:17
3 not was not there for repellency purposes, but 03:14	3 Koehler to use harborage in this experiment? 03:17
4 rather that people understood the devices were 03:14	4 A. I 03:17
5 working? 03:14	
o working.	5 MR. OSTOJIC: I would ask that then you read 03:
6 MR. OSTOJIC: Same objection. 03:14	
_	6 through the entire study or the document if you're 03:1
6 MR. OSTOJIC: Same objection. 03:14 7 BY THE WITNESS: 03:14	6 through the entire study or the document if you're 03:1 7 going to ask him specific questions on the testing 03:1
6 MR. OSTOJIC: Same objection. 03:14 7 BY THE WITNESS: 03:14 8 A. Yes. 03:14	6 through the entire study or the document if you're 03:1 7 going to ask him specific questions on the testing 03:18 8 that was done allegedly in the document. 03:18
6 MR. OSTOJIC: Same objection. 03:14 7 BY THE WITNESS: 03:14 8 A. Yes. 03:14 9 BY MR. KOPEL: 03:14	6 through the entire study or the document if you're 03:1 7 going to ask him specific questions on the testing 03:18 8 that was done allegedly in the document. 03:18 9 THE WITNESS: Which I'll take the time to do. 03:18
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6 MR. OSTOJIC: Same objection. 03:14 7 BY THE WITNESS: 03:14 8 A. Yes. 03:14 9 BY MR. KOPEL: 03:14 10 Q. Okay. Now, Dr. Koehler used harborage in 03:14 11 this test; correct? 03:14 12 A. I saw that word. I have not read it with 03:14 13 enough I mean I cannot describe the harborage 03:15 14 without probably reading more but. 03:15 15 Q. Well, if you look at Page 1028, I'm 03:15 16 looking at the second paragraph here. 03:15 17 A. Okay. Under German Cockroach? 03:15	6 through the entire study or the document if you're 03:1 7 going to ask him specific questions on the testing 03:1 8 that was done allegedly in the document. 03:18 9 THE WITNESS: Which I'll take the time to do. 03:18 10 BY MR. KOPEL: 03:18 11 Q. You're welcome to. This this document 03:18 12 was cited in your rebuttal report; correct? 03:18 13 A. Yeah. 03:18 14 Q. Okay. 15 A. For a reason that was not your question, 03:18 16 but 03:18 17 Okay. I have read through. So 03:26 18 question? 03:26
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1 Q. Was that improper? 03:27	1 want to please take them one at a time. 03:29
2 A. Not in his mind. 03:27	2 First of all, do you see any 03:29
3 Q. Was it improper in your opinion? 03:27	3 indication that there was more than one rolled to 03:29
4 MR. OSTOJIC: Object to form, foundation. 03:27	4 cardboard piece in each room? 03:30
5 Go ahead. 03:27	5 A. I thought I read that, but maybe not. I 03:30
6 BY THE WITNESS: 03:27	6 know there was at least one. You pointed that out to 03:30
7 A. For his purposes I don't believe if was 03:27	7 me. So let's - let's stipulate that there was one. 03:30
8 improper for what he was trying to do. 03:27	8 Q. Okay. So the second you mention the size 03:30
9 Q. And what's that? 03:27	9 of the room, and I'm still failing to understand. 03:30
10 A. He was trying to determine whether the 03:27	How how does the size of the room 03:30
11 repellers repelled cockroaches German cockroaches. 03:27	11 affect whether or not it's appropriate to use 03:30
Q. So for those purposes it was okay that he 03:27	12 harborage? 03:30
13 placed harborages in the rooms? 03:27	A. When you're trying to determine whether a 03:30
14 A. Well, for his study design, which was 03:27	14 pest repeller repels insects, you don't need to have 03:30
15 this what's the area it's 6.7 meter by a 03:27	15 harborages at all. 03:30
16 much larger scale rooms I guess you would call them 03:27	What I read in Koehler's experiment 03:30
17 as for his purposes those harborages I mean for 03:27	17 is that he wanted to simulate or replicate, if you 03:30
18 his purpose in the larger rooms that different 03:28	18 will, the conditions in a, quote, normal size two 03:30
19 than Potter's or Intellitec, the Chinese stuff. I 03:28	19 rooms. 03:31
20 don't see that it was improper. 03:28	And because of the space available, 03:31
21 Q. Okay. How were his purposes different 03:28	21 the pheromones that Dr. Potter says are in those 03:31
22 than Potter's purposes? 03:28	22 harborages, are going to be spread out through the 03:31
23 MR. OSTOJIC: Object to form. 03:28	23 entire volume of the room as opposed to a small cube 03:3
24 BY THE WITNESS: 03:28	24 like Dr. Potter had. 03:31
25 A. For for insects Dr. Kochler was 03:28	25 Q. Have you done an analysis of the sample 03:31
Page 194	
1 conducting this experiment in large rooms, in I 03:28	I sizes used here versus the sample size used by 03:31
2 think he said somewhere in here that he tried to 03:28	2 Dr. Potter? 03:31
3 approximate natural conditions or normal living space 03:28	3 A. No. 03:31
4 or something to that effect. 03:28	4 Q. So it's possible that they were just as 03:31
5 Dr. Potter's insect tests were 03:28	5 concentrated with pests; isn't that correct? 03:31
6 conducted in a in a chamber cube basically, not 03:28	6 MR. OSTOJIC: Object to form as far as 03:31
7 the size certainly not the size of a room. 03:28	7 possibility. 03:31
8 BY MR. KOPEL: 03:29	8 But go ahead. 03:31
O II	
9 Q. How was the size relevant to whether or 03:29	9 BY THE WITNESS: 03:31
10 not use of harborage was appropriate? 03:29	9 BY THE WITNESS: 03:31 10 A. It's possible. 03:31
10 not use of harborage was appropriate? 03:29	10 A. It's possible. 03:31
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1 THE WITNESS: Okay. Now I've lost it. 03:32	1 that. 03:35
2 MR. KOPEL: Do you remember the question? 03:32	2 Okay. So do you see here in Table 4 03:35
3 THE WITNESS: No, please repeat, 03:32	3 on Page 1029 that Dr. Koehler did not count the 03:35
4 BY MR. KOPEL: 03:32	4 cockroaches found in the corridor as being in the 03:35
5 Q. The fact that this was approved in a 03:32	5 untreated room, he counted them separately? 03:35
6 peer-reviewed publication, suggests that the other 03:32	6 Do you see that? 03:35
7 scientists who reviewed this before publication were 03:32	7 A. I do. 03:35
8 okay with the fact that Dr. Koehler used harborage in 03:32	8 Q. Okay. And and you were saying in your 03:35
9 this study; correct? 03:32	9 rebuttal report that it's more appropriate to count a 03:35
10 A. Correct, Under these conditions. 03:32	10 corridor as being repelled. 03:35
11 O. Okay. And would you agree use of 03:32	11 Do you remember that? 03:35
12 harborage in such an experiment would more closely 03:32	12 A. Well, if you're limiting your categories 03:35
13 approximate real-world conditions where people in 03:32	13 to two, yes. There's always the possibility to add a 03:35
14 their homes do have spaces that can be used by 03:32	14 third as Dr. Koehler did, corridor or tunnel or 03:35
15 insects as harborage; correct? 03:32	15 connecting to, and that would have been even better 03:3
	16 in my opinion had the researchers done that. 03:35
16 MR. OSTOJIC: Object to form. 03:33	17 Q. So what is it that you think they did 03:35
17 Go ahead. 03:33	18 incorrectly? 03:36
18 BY THE WITNESS: 03:33	
19 A. If yes, if if that's the objective 03:33	19 A. I didn't say incorrect. I just said 03:36 20 would have been more informative 03:36
20 of the experiment. 03:33	
21 BY MR. KOPEL: 03:33	21 Q. Oh, okay. 03:36
Q. Did you see here that Dr. Koehler found 03:33	22 A if they had created a third category 03:36
23 that the presence of an upholstered chair and sofa 03:33	23 called like Koehler did corridor or connecting 03:36
24 and coffee table significantly attenuated the 03:33	24 to, number found in connecting to. 03:36
25 strength of ultrasonic signals? 03:33	25 Q. Okay. And when you say the researchers, 03:36
Page 198	Page 200
1 I'm referencing Page 1028, column 03:33	1 are you referring to i2L? 03:36
2 of the right-hand column, the second to the last 03:33	2 A. Yes. 03:36
3 paragraph. 03:33	3 Q. Okay. Now, wouldn't it be very easy to 03:36
	1
4 A. Well, and I was looking at his data in 03:33	4 deduce how many were in the tube if you just took 03:36
4 A. Well, and I was looking at his data in 03:33 5 Table 3, which I'd have to cross-reference back to 03:33	4 deduce how many were in the tube if you just took 03:36  5 them out that were in the treated portion and 03:36
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5 Table 3, which I'd have to cross-reference back to 03:33 6 what you said. 03:33 7 Q. Sure. 03:33	5 them out that were in the treated portion and 03:36 6 untreated portion and then you saw how many were 03:36 7 missing? Wouldn't you then be able to deduce how 03:36
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7 authors thought, but go ahead.         03:37         8 PY THE WITNESS:         03:40         03:40         03:40         03:40         03:40         10 must have agreed with it.         03:37         10 must have agreed with it.         03:37         11         There were other studies where the 03:37         13 you're going to ask me which ones, but I seem to 03:37         14 remember other studies that did not have the third 03:37         15 category called corridor, but included—if they 03:37         16 were not in the —if they were not in the repeller 03:37         16 were not in the —if they were not in the repeller 03:37         16 were not in the —if they were not in the repeller 03:38         19 person doing the research.         03:40         17 Q. Why?         18 A. Yes.         03:40         03:40         17 Q. Why?         18 A. Yes.         03:40         17 Q. Why?         18 A. Yes.         03:40         17 Q. Why?         18 A. Yes.         03:40         17 Q. Why?         18 A. Resume the Bell + Howell repellers were 03:40         19 not in this study.         03:40         17 Q. Why?         18 A. Resume the Bell + Howell repellers were 03:40         19 not in this study.         03:40         20 Why?         21 with companible frequencies, comparable 03:40         22 which companible frequencies, comparable 03:40         23 decibels, but not the unit itself.         03:40         23 decibels, but n	6 for itself, may call for speculation as to what the 03:37	
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13 you're going to ask me which ones, but I seem to 03:37 14 remember other studies that did not have the third o3:37 15 category called corridor, but included — if they 03:37 16 were not in the — if they were not in the repeller 03:37 16 A. Yes. 03:40 17 chamber, then they were by definition not repelled. 03:38 18 So I think it depends on — on the 03:38 19 person doing the research. 03:38 21 it this way, and I — given enough time, I could find 03:38 22 those documents — those other researchers I m 03:38 23 talking about which were peer-reviewed article, and 03:38 25 corridor. 03:38 Page 202 1 BY MR. KOPEL: 03:38 2 Q. And do you know if they counted them as 03:38 2 Q. And do you know if they counted them as 03:38 6 Q. So do you have a specific memory of any 03:38 6 Corridor connecting tube as being repelled. 03:38 8 corridor connecting tube as being repelled. 03:38 110 all the references that we've discussed today. 03:38 12 though; right? 03:38 13 a A. No, I didn't go that far. 03:38 14 the methodology of not counting the peas in a 03:39 18 acceptable approach as a matter of science? 03:39 18 MR. KOPEL: 03:39 18 acceptable approach as a matter of science? 03:39 18 A. I for ne example. It was accepted, yeah. 03:39 12 D. Way R. KOPEL: 03:39 18 A. I for the methodology of not counting the peas in a 03:39 12 D. Way R. KOPEL: 03:39 18 A. No, I didn't go that far. 03:39 18 A. No, I didn't go that far. 03:39 18 acceptable approach as a matter of science? 03:39 18 A. I for the counting the peas in a 03:39 18 A. I for the counting the repelled. 03:39 18 A. I for the methodology of not counting the peas in a 03:39 18 A. I for the methodology of not counting the peas in a 03:39 18 A. I for the methodology of not counting the peas in a 03:39 18 A. I for the methodology of not counting the peas in a 03:39 18 A. I for the methodology of not counting the peas in a 03:39 18 A. I for the methodology of not counting the peas in a 03:39 18 A. I for the methodology of not counting the peas in a 03:39 18 A. I for the methodology of	12 researchers and I would have to look for them if 03:37	05.70
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18 acceptable approach as a matter of science? 03:39 19 MR. OSTOJIC: Object to form and foundation. 03:39 20 BY THE WITNESS: 03:39 21 A. It's one example. It was accepted, yeah. 03:39 22 BY MR. KOPEL: 03:39 23 O. Now, prove if you leak at Page 1020, 03:30 24 Single study; right, he relied on several pieces of 03:41 29 data; correct? 03:41 20 A. I don't know. 03:41 21 MR. OSTOJIC: Objection. Calls for 03:41 22 speculation. 03:41	17 corridor as being repelled is a methodologically 03:39	
19 MR. OSTOJIC: Object to form and foundation. 03:39 20 BY THE WITNESS: 03:39 21 A. It's one example. It was accepted, yeah. 03:39 22 BY MR. KOPEL: 03:39 23 O Now provifes a local set Page 1020 and 03:20 and 03:41 24 MR. OSTOJIC: Objection. Calls for 03:41 25 Speculation. 03:41	18 acceptable approach as a matter of science? 03:39	
20 BY THE WITNESS:       03:39       20 A. I don't know.       03:41         21 A. It's one example. It was accepted, yeah.       03:39       21 MR. OSTOJIC: Objection. Calls for 03:41         22 BY MR. KOPEL:       03:39       22 speculation.       03:41	19 MR. OSTOJIC: Object to form and foundation. 03:39	10.1
21 A. It's one example. It was accepted, yeah. 03:39 22 BY MR. KOPEL: 03:39 23 O. Now, pay if you look at Page 1020 03:41	20 BY THE WITNESS: 03:39	
22 BY MR. KOPEL: 03:39 22 speculation. 03:41	21 A. It's one example. It was accepted, yeah. 03:39	
23 O Now pow if you look at Poor 1020 02:20	AS DAYS OF TRANSPORT	00 1.1
	23 Q. Now now, if you look at Page 1030, 03:39	
24 please. In the second paragraph Dr. Koehler says 03:39  24 Q. Well, you read you read Dr. Potter's 03:41		
25 finds that "The cockroaches did not move 03:39 25 report; right? 03:41		
Dags 202		Page 205

1 A. He cites other studies, yes. 03:41	1 make that assessment; but to the extent you can 03:43
Q. And he also and he's also relying on 03:41	2 answer, go ahead. 03:43
3 the i2L study and the CR Research studies; correct? 03:41	3 BY THE WITNESS: 03:43
4 MR. OSTOЛС: Same objection. 03:41	4 A. That's what I was going to say. 03:43
5 BY THE WITNESS: 03:42	5 MR. KOPEL: Yeah, I'm going to ask counsel to 03:4
6 A. Yeah, I I think the word rely may be a 03:42	6 please stop telling the witness what to say because 03:43
7 legal term that's a little I mean what's the 03:42	7 that's inappropriate. 03:43
8 weight of evidence you put on each one, I don't know. 03:42	8 BY MR. KOPEL: 03:43
9 He didn't rely solely on any one. 03:42	9 Q. But so can you are you here's a 03:43
10 He he relied on in his you know, his own 03:42	10 follow-up question. 03:43
11 studies, just like I am relying on the totality of 03:42	MR. OSTOJIC: I'm not really. Honestly, I'm 03:43
12 everything that I looked at. 03:42	12 not trying to coach him. I'm really making legal 03:44
13 BY MR, KOPEL; 03:42	13 objection. 03:44
14 Q. Okay. So given that was it 03:42	14 MR. KOPEL: That doesn't sound like a legal 03:44
15 inappropriate for Dr. Potter to rely in part on this 03:42	15 objection to me. 03:44
16 study in making his determination that his opinion is 03:42	16 MR. OSTOJIC: But if you're asking — if 03:44
17 that Bell + Howell ultrasonic pest repellers are 03:42	17 you're asking a witness to evaluate characteristics 03:44
18 infective as to cockroaches? 03:42	18 but provide none of the characteristics, it calls for 03:44
19 MR. OSTOJIC: Objection. Asked and answered. 03:42	19 speculation. It's difficult. 03:44
20 But you can answer it again. 03:42	20 BY MR. KOPEL: 03:44
21 BY THE WITNESS: 03:42	Q. Can you identify any differences between 03:44
A. It would be I forget the word you 03:42	22 the physical properties of the sound emitted from 03:44
23 used 03:42	23 these devices versus the physical properties of the 03:44
MR. OSTOЛС: Inappropriate. 03:42	24 sound emitted from the Bell + Howell ultrasonic pest 03:
25	25 repellers? 03:44
Page 206	Page 208
1 BY THE WITNESS: 03:42	1 MR. OSTOJIC: Same objections. 03:44
A inappropriate because the 03:42	2 BY THE WITNESS: 03:44
3 Bell + Howell units were not in this list of nine. 03:42	3 A. I have to go to their their label for 03:44
	and the state of t
4 It's additional data, and some of 03:42	4 the table. Table 1, Characteristics of Commercial 03:44
4 It's additional data, and some of 03:42 5 the frequencies and the decibels overlap, so it's all 03:42	*A *P**) #200 ACCEPTAGE TO MARK CORD PK PK
	4 the table. Table 1, Characteristics of Commercial 03:44
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1			***
1	emitted from the device? 03:45	1	the you know, to block the sound. 03:48
2	A. Well, if you if you have a a 03:45	2	Q. Okay. Now I want to get back to the 03:48
3	speaker output hole that is one centimeter in 03:45	3	question I actually asked, which is: Do you have a 03:49
4	diameter versus one that's three centimeters in 03:45	4	reason to dispute Dr. Koehler's conclusion here at 03:49
5	diameter, it would seem logical to me that there 03:45	5	the end of the study, that the physics of ultrasound 03:49
6	would be less sound coming out of that smaller hole. 03:4	5 6	limits its potential efficacy in normal residences 03:49
7	Q. Okay. And let's finish up with this 03:45	7	and commercial establishments? 03:49
8	first. 03:46	8	A. Under the conditions that he tested those 03:49
9	Now, just above that on Page 1030 03:46	9	nine units that is I think a valid conclusion from 03:49
10	Dr. Koehler says, "Since most inhabited areas of 03:46	10	his specific design and setup. 03:49
11	buildings where household pests are prevalent, have 03:4	611	Q. And and to be clear okay. Thank 03:49
12	furniture, the attenuation of sound by placement of 03:46	12	you. 03:49
	furniture indicates that thorough treatment with high 03:46		
	SPL is most probably impossible with current 03:46		reporter to please mark as the deposition 03:50
	available technology." 03:46		transcript of Paul W. Borth in Golaski v. Applica 03:50
16	Do you see that? 03:46		Consumer Products as Exhibit 9. 03:50
17	A. Well, you didn't when you started you 03:46	17	(Whereupon, a certain
18	said just above that, but I had forgotten where we 03:46	18	- ·
	were, so are you on the I do see a sentence 03:47	19	Exhibit 9 for
	starting, "Since most inhabited areas." 03:47	20	identification.) 03:51
21	Is that what you just read? I 03:47	21	BY MR. KOPEL: 03:51
22		22	Q. Dr. Borth, do you have Exhibit 9? 03:51
23	Q. No, no, no. That's totally fine. You 03:47	23	•
24	know what. I'm actually going to I'm going to 03:47	24	Q. Have you seen it before? 03:51
	move on from that question. 03:47	25	
	Page 210		Page 212
1	Can you please look at the very end 03:47	1	Q. What is it? 03:51
2	of this report here, the last sentence which reads: 03:47	2	A. It's a transcript of the deposition that 03:51
3	"Although manufacturers claim that ultrasound can 03:4	7 3	I gave in connection with the Galoski versus Applica 03:
4	penetrate voids to control pests, the presence of 03:47	4	Consumer Products case. 03:51
5	furniture in a room significantly decrease the 03:47	5	Q. Now, I know that you don't have time to 03:51
6	intensity of ultrasound. Therefore, the physics of 03:47	6	read through this whole thing, but just as sitting 03:51
7	ultrasound limits its potential efficacy in normal 03:47	7	here right now, without having to review this whole 03:5
8	residences and commercial establishments." 03:48	8	thing, is there anything that comes to mind that 03:51
9	Do you see that? 03:48	9	that you said here that you recall to be incorrect or 03:51
	A T d ( 00.40	10	
10	A. I see that. 03:48	10	that you would change your testimony on? 03:51
10 11	A. 1 see that. 03:48  Q. Okay. Do you have any reason to disagree 03:48	11	that you would change your testimony on? 03:51 MR. OSTOJIC: Object to form. 03:51
11		11	
11	Q. Okay. Do you have any reason to disagree 03:48	11	MR. OSTOJIC: Object to form. 03:51 BY MR. KOPEL: 03:51
11 12 13	Q. Okay. Do you have any reason to disagree $$ 03:48 with that? $$ 03:48	11 12 13	MR. OSTOJIC: Object to form. 03:51 BY MR. KOPEL: 03:51
11 12 13	Q. Okay. Do you have any reason to disagree 03:48 with that? 03:48  MR. OSTOJIC: Object to form, 03:48  BY THE WITNESS: 03:48	11 12 13	MR. OSTOJIC: Object to form. 03:51 BY MR. KOPEL: 03:51 Q. With given the caveat that you have 03:51 not reviewed the whole thing right now? 03:51
11 12 13 14 15	Q. Okay. Do you have any reason to disagree 03:48 with that? 03:48  MR. OSTOJIC: Object to form. 03:48  BY THE WITNESS: 03:48	11 12 13 14 15	MR. OSTOJIC: Object to form. 03:51 BY MR. KOPEL: 03:51 Q. With given the caveat that you have 03:51 not reviewed the whole thing right now? 03:51
11 12 13 14 15	Q. Okay. Do you have any reason to disagree 03:48 with that? 03:48  MR. OSTOJIC: Object to form, 03:48  BY THE WITNESS: 03:48  A. Well, as it relates to this case, it's - 03:48	11 12 13 14 15	MR. OSTOJIC: Object to form. 03:51  BY MR. KOPEL: 03:51  Q. With given the caveat that you have 03:51  not reviewed the whole thing right now? 03:51  MR. OSTOJIC: Object to form, foundation. 03:52  BY THE WITNESS: 03:52
11 12 13 14 15 16	Q. Okay. Do you have any reason to disagree 03:48 with that? 03:48  MR. OSTOJIC: Object to form. 03:48  BY THE WITNESS: 03:48  A. Well, as it relates to this case, it's - 03:48 it's not relevant. 03:48	11 12 13 14 15 16 17	MR. OSTOJIC: Object to form. 03:51  BY MR. KOPEL: 03:51  Q. With given the caveat that you have 03:51  not reviewed the whole thing right now? 03:51  MR. OSTOJIC: Object to form, foundation. 03:52  BY THE WITNESS: 03:52
11 12 13 14 15 16 17	Q. Okay. Do you have any reason to disagree 03:48 with that? 03:48  MR. OSTOJIC: Object to form. 03:48  BY THE WITNESS: 03:48  A. Well, as it relates to this case, it's - 03:48 it's not relevant. 03:48  BY MR. KOPEL: 03:48	11 12 13 14 15 16 17	MR. OSTOJIC: Object to form. 03:51  BY MR. KOPEL: 03:51  Q. With given the caveat that you have 03:51  not reviewed the whole thing right now? 03:51  MR. OSTOJIC: Object to form, foundation. 03:52  BY THE WITNESS: 03:52  A. Well, I guess I have to ask a legal 03:52  question or opinion. 03:52
11 12 13 14 15 16 17 18 19	Q. Okay. Do you have any reason to disagree 03:48 with that? 03:48  MR. OSTOJIC: Object to form. 03:48  BY THE WITNESS: 03:48  A. Well, as it relates to this case, it's - 03:48 it's not relevant. 03:48  BY MR. KOPEL: 03:48  Q. Why not? 03:48	11 12 13 14 15 16 17 18	MR. OSTOJIC: Object to form. 03:51  BY MR. KOPEL: 03:51  Q. With given the caveat that you have 03:51  not reviewed the whole thing right now? 03:51  MR. OSTOJIC: Object to form, foundation. 03:52  BY THE WITNESS: 03:52  A. Well, I guess I have to ask a legal 03:52  question or opinion. 03:52
11 12 13 14 15 16 17 18 19	Q. Okay. Do you have any reason to disagree 03:48 with that? 03:48  MR. OSTOJIC: Object to form. 03:48  BY THE WITNESS: 03:48  A. Well, as it relates to this case, it's - 03:48 it's not relevant. 03:48  BY MR. KOPEL: 03:48  Q. Why not? 03:48  A. Because Bell + Howell did not claim that 03:48	11 12 13 14 15 16 17 18 19 20	MR. OSTOJIC: Object to form. 03:51  BY MR. KOPEL: 03:51  Q. With given the caveat that you have 03:51  not reviewed the whole thing right now? 03:51  MR. OSTOJIC: Object to form, foundation. 03:52  BY THE WITNESS: 03:52  A. Well, I guess I have to ask a legal 03:52  question or opinion. 03:52  The counsel that I I say reported 03:52
11 12 13 14 15 16 17 18 19 20 21	Q. Okay. Do you have any reason to disagree 03:48 with that? 03:48  MR. OSTOJIC: Object to form. 03:48  BY THE WITNESS: 03:48  A. Well, as it relates to this case, it's - 03:48 it's not relevant. 03:48  BY MR. KOPEL: 03:48  Q. Why not? 03:48  A. Because Bell + Howell did not claim that 03:48 ultrasound can penetrate voids to control pests. 03:48	11 12 13 14 15 16 17 18 19 20 21	MR. OSTOJIC: Object to form.  O3:51  Q. With given the caveat that you have 03:51  not reviewed the whole thing right now? 03:51  MR. OSTOJIC: Object to form, foundation. 03:52  BY THE WITNESS: 03:52  A. Well, I guess I have to ask a legal 03:52  question or opinion. 03:52  The counsel that I I say reported 03:52  to or that I was working with on this case told me at 03:52  the end of the case that this case was to be kept 03:52
11 12 13 14 15 16 17 18 19 20 21	Q. Okay. Do you have any reason to disagree 03:48 with that? 03:48  MR. OSTOJIC: Object to form. 03:48  BY THE WITNESS: 03:48  A. Well, as it relates to this case, it's — 03:48 it's not relevant. 03:48  BY MR. KOPEL: 03:48  Q. Why not? 03:48  A. Because Bell + Howell did not claim that 03:48 ultrasound can penetrate voids to control pests. 03:48  Q. Okay. How about the second part of that 03:48 sentence? 03:48	11 12 13 14 15 16 17 18 19 20 21 22	MR. OSTOJIC: Object to form.  O3:51  Q. With given the caveat that you have 03:51  not reviewed the whole thing right now? 03:51  MR. OSTOJIC: Object to form, foundation. 03:52  BY THE WITNESS: 03:52  A. Well, I guess I have to ask a legal 03:52  question or opinion. 03:52  The counsel that I I say reported 03:52  to or that I was working with on this case told me at 03:52  the end of the case that this case was to be kept 03:52  confidential, so I have refrained from saying 03:52
11 12 13 14 15 16 17 18 19 20 21 22 23	Q. Okay. Do you have any reason to disagree 03:48 with that? 03:48  MR. OSTOJIC: Object to form. 03:48  BY THE WITNESS: 03:48  A. Well, as it relates to this case, it's - 03:48 it's not relevant. 03:48  BY MR. KOPEL: 03:48  Q. Why not? 03:48  A. Because Bell + Howell did not claim that 03:48 ultrasound can penetrate voids to control pests. 03:48  Q. Okay. How about the second part of that 03:48 sentence? 03:48  A. Again, I would like to review the label 03:48	11 12 13 14 15 16 17 18 19 20 21 22 23	MR. OSTOJIC: Object to form.  O3:51  Q. With given the caveat that you have 03:51  not reviewed the whole thing right now? 03:51  MR. OSTOJIC: Object to form, foundation. 03:52  BY THE WITNESS: 03:52  A. Well, I guess I have to ask a legal 03:52  question or opinion. 03:52  The counsel that I I say reported 03:52  to or that I was working with on this case told me at 03:52  the end of the case that this case was to be kept 03:52
11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q. Okay. Do you have any reason to disagree 03:48 with that? 03:48  MR. OSTOJIC: Object to form. 03:48  BY THE WITNESS: 03:48  A. Well, as it relates to this case, it's - 03:48 it's not relevant. 03:48  BY MR. KOPEL: 03:48  Q. Why not? 03:48  A. Because Bell + Howell did not claim that 03:48 ultrasound can penetrate voids to control pests. 03:48  Q. Okay. How about the second part of that 03:48 sentence? 03:48  A. Again, I would like to review the label 03:48	11 12 13 14 15 16 17 18 19 20 21 22 23	MR. OSTOJIC: Object to form.  Q. With given the caveat that you have 03:51  not reviewed the whole thing right now? 03:51  MR. OSTOJIC: Object to form, foundation.  BY THE WITNESS: 03:52  A. Well, I guess I have to ask a legal 03:52  question or opinion. 03:52  The counsel that I I say reported 03:52  to or that I was working with on this case told me at 03:52  the end of the case that this case was to be kept 03:52  confidential, so I have refrained from saying anything about this particular case under that 03:52  direction. 03:52

1 BY MR. KOPEL: 2 Q. Okay. And I'm going to represent to you 03:52 3 that this deposition transcript is public record. I 03:52 4 took this off of the court's docket, so this is not a 03:52 5 confidential document. 6 A. Okay. Can I ask my attorney? 7 MR. KOPEL: Go ahead. 8 MR. OSTOJIC: I don't know anything about 03:52 9 that case. It really would I guess depend upon how 03:52 10 the parties in that case resolved that case with 03:53 11 respect to the confidentiality and whether this 03:53 12 deposition would fall under that clause. 13 BY MR. KOPEL: 14 Q. Well, were you a party to any settlement 03:53 15 question pending, but obviously 16 Q. MR. KOPEL: Okay. That's fine. 17 Q. Well, were you a party to any settlement 03:52 18 question pending, but obviously 19 Q. MR. KOPEL: Okay. That's fine. 19 Q. So, DR. Borther: Okay. That's fine. 10 Q. So, DR. Borther: Okay. 11 front of you; correct? 12 A. I do, yes. 13 Q. Okay. Can you can you please turn to 04:22 14 Q. Well, were you a party to any settlement 03:53 15 Q. Okay. Can you can you please turn to 04:22	03:54
3 that this deposition transcript is public record. I 03:52 4 took this off of the court's docket, so this is not a 03:52 5 confidential document. 03:52 6 A. Okay. Can I ask my attorney? 03:52 7 MR. KOPEL: Go ahead. 03:52 9 that case. It really would I guess depend upon how 03:52 10 the parties in that case resolved that case with 03:53 11 respect to the confidentiality and whether this 03:53 12 deposition would fall under that clause. 03:53 13 THE VIDEOGRAPHER: The time is 3:56.  4 We're off the record. 03:54 5 (WHEREUPON, a recess was 04:19 6 A. Okay. Can I ask my attorney? 03:52 7 THE VIDEOGRAPHER: The time is now 4:24. 8 We're back on the record. 04:22 9 BY MR. KOPEL: 04:22 10 THE VIDEOGRAPHER: The time is 3:56. 10 Q. So, Dr. Borth, you've got Exhibit 9 in 04:22 11 front of you; correct? 04:22 12 deposition would fall under that clause. 03:53 13 Q. Okay. Can you can you please turn to 04:21 14 Q. Well, were you a party to any settlement 03:53 14 Page 142. 04:22	03:54
4 took this off of the court's docket, so this is not a 03:52 5 confidential document. 6 A. Okay. Can I ask my attorney? 7 MR. KOPEL: Go ahead. 8 MR. OSTOJIC: I don't know anything about 03:52 9 that case. It really would I guess depend upon how 03:52 10 the parties in that case resolved that case with 03:53 11 respect to the confidentiality and whether this 03:53 12 deposition would fall under that clause. 13 BY MR. KOPEL: 14 We're off the record. 16 (WHEREUPON, a recess was 04:19 16 had.) 17 THE VIDEOGRAPHER: The time is now 4:24. 18 We're back on the record. 19 BY MR. KOPEL: 10 Q. So, Dr. Borth, you've got Exhibit 9 in 04:22 11 front of you; correct? 12 deposition would fall under that clause. 13 Q. Okay. Can you can you please turn to 04:22 14 Q. Well, were you a party to any settlement 03:53 15 Q. Okay. Can you can you please turn to 04:22	03:54
5 confidential document.  03:52  5 (WHEREUPON, a recess was 04:19  A. Okay. Can I ask my attorney? 03:52  7 MR. KOPEL: Go ahead. 03:52  8 MR. OSTOJIC: I don't know anything about 03:52  9 that case. It really would I guess depend upon how 03:52  10 the parties in that case resolved that case with 03:53  11 front of you; correct? 04:22  12 deposition would fall under that clause. 03:53  13 Q. Okay. Can you can you please turn to 04:21  14 Q. Well, were you a party to any settlement 03:53  15 (WHEREUPON, a recess was 04:19  had.) 04:22  7 THE VIDEOGRAPHER: The time is now 4:24.  8 We're back on the record. 04:22  9 BY MR. KOPEL: 04:22  10 Q. So, Dr. Borth, you've got Exhibit 9 in 04:22  11 front of you; correct? 04:22  12 A. I do, yes. 04:22  13 Q. Okay. Can you can you please turn to 04:21  14 Page 142. 04:22	
6 A. Okay. Can I ask my attorney? 03:52 6 had.) 04:22 7 MR. KOPEL: Go ahead. 03:52 7 THE VIDEOGRAPHER: The time is now 4:24. 8 MR. OSTOJIC: I don't know anything about 03:52 8 We're back on the record. 04:22 9 that case. It really would I guess depend upon how 03:52 9 BY MR. KOPEL: 04:22 10 the parties in that case resolved that case with 03:53 10 Q. So, Dr. Borth, you've got Exhibit 9 in 04:22 11 respect to the confidentiality and whether this 03:53 11 front of you; correct? 04:22 12 deposition would fall under that clause. 03:53 12 A. I do, yes. 04:22 13 BY MR. KOPEL: 03:53 13 Q. Okay. Can you can you please turn to 04:21 14 Q. Well, were you a party to any settlement 03:53 14 Page 142. 04:22	
7 MR. KOPEL: Go ahead. 03:52 7 THE VIDEOGRAPHER: The time is now 4:24. 8 MR. OSTOJIC: I don't know anything about 03:52 8 We're back on the record. 04:22 9 that case. It really would I guess depend upon how 03:53 10 Q. So, Dr. Borth, you've got Exhibit 9 in 04:22 11 respect to the confidentiality and whether this 03:53 11 front of you; correct? 04:22 12 deposition would fall under that clause. 03:53 12 A. I do, yes. 04:22 13 BY MR. KOPEL: 03:53 13 Q. Okay. Can you can you please turn to 04:21 14 Q. Well, were you a party to any settlement 03:53 14 Page 142. 04:22	
8 MR. OSTOJIC: I don't know anything about 03:52 8 We're back on the record. 04:22 9 that case. It really would I guess depend upon how 03:53 9 BY MR. KOPEL: 04:22 10 the parties in that case resolved that case with 03:53 10 Q. So, Dr. Borth, you've got Exhibit 9 in 04:22 11 respect to the confidentiality and whether this 03:53 11 front of you; correct? 04:22 12 deposition would fall under that clause. 03:53 12 A. I do, yes. 04:22 13 BY MR. KOPEL: 03:53 13 Q. Okay. Can you can you please turn to 04:21 14 Q. Well, were you a party to any settlement 03:53 14 Page 142. 04:22	
9 that case. It really would I guess depend upon how 03:52	04:22
9 that case. It really would I guess depend upon how 03:52	
10 the parties in that case resolved that case with 03:53 11 respect to the confidentiality and whether this 03:53 12 deposition would fall under that clause. 03:53 13 BY MR. KOPEL: 03:53 14 Q. Well, were you a party to any settlement 03:53 10 Q. So, Dr. Borth, you've got Exhibit 9 in 04:22 11 front of you; correct? 04:22 12 A. I do, yes. 04:22 13 Q. Okay. Can you can you please turn to 04:2	
11 respect to the confidentiality and whether this 03:53 11 front of you; correct? 04:22 12 deposition would fall under that clause. 03:53 12 A. I do, yes. 04:22 13 BY MR. KOPEL: 03:53 13 Q. Okay. Can you can you please turn to 04:21 14 Q. Well, were you a party to any settlement 03:53 14 Page 142. 04:22	
12 deposition would fall under that clause. 03:53 12 A. I do, yes. 04:22 13 BY MR. KOPEL: 03:53 13 Q. Okay. Can you can you please turn to 04:21 14 Q. Well, were you a party to any settlement 03:53 14 Page 142. 04:22	
13 BY MR. KOPEL:       03:53       13 Q. Okay. Can you can you please turn to 04:2         14 Q. Well, were you a party to any settlement 03:53       14 Page 142.       04:22	
14 Q. Well, were you a party to any settlement 03:53 14 Page 142. 04:22	2
	~
15 agreement in that case? 03;53   15 A. Okay. 04:22	
	מי
, ,	
19 MR. OSTOJIC: I don't know. You know 03:53 19 Q. The question reads: "So it's your 04:23	
20 settlement agreements with confidentiality includes 03:53 20 opinion just so I am clear that once you test a 04:2	
21 not just parties but experts and everything, so I'm 03:53 21 device that emits ultrasonic waves, if you have a 04:	
, , , , , , , , , , , , , , , , , , ,	:23
	:23
24 agreement of confidentiality, so I can't comment. 03:53 24 necessarily need to test that specific device, you 04:2	
25 MR. KOPEL: I'd like to examine 03:53 25 could imply the results from the test of the original 04:	
Page 214	Page 216
1 MR. OSTOЛС: I can tell you having other 03:53 1 device." 04:23	
	04:23
3 experts, agents, it goes to attorneys, law firms, as 03:53 3 reason I'd say." 04:23	
4 well as the parties of the case. 03:53 4 Now, was this your testimony? 0-	1:23
5 MR. KOPEL: 1'd like to examine the witness 03:53 5 A. Yes. 04:23	
6 on this deposition transcript. 03:53 6 Q. Okay. And when and when we talk ab	out 04:2
7 Is it your intention to instruct him 03:53 7 voltage magnitude, that's directly related to decibe	el 04:23
8 not to answer those questions? 03:53 8 level; correct? 04:23	
9 MR. OSTOJIC: It is not my intention. It's 03:53 9 A. Yes. 04:23	
10 really I suppose up to him. 03:53 10 Q. Okay. Do you still believe this to be	)4:23
11 Although I would then I'm not 03:54 11 true? 04:23	
12 sure if the court reporter can mark for us from the 03:54   12 MR. OSTOJIC: Object to form, foundation.	04:23
13 beginning of the questioning on this exhibit to the 03:54 13 BY THE WITNESS: 04	
14 end because it may need to be redacted or if the 03:54   14 A. Are you asking if I would answer the san	
15 people of the parties in that other case come in 03:54 15 way? 04:24	
16 later and find that it was part of the 03:54 16 BY MR. KOPEL: 04:2-	4
17 confidentiality agreement. 03:54 17 Q. Yes. 04:24	•
18 MR. KOPEL: Okay. So at that point 03:54 18 A. I would elaborate; but, yes, the core of	04.24
19 MR. OSTOJIC: I don't know though. I mean 03:54 19 the the core of the answer would be the same.	
	04:24
21 MD IZODET At that maint P11 02.54 101	04:24
MR. KOPEL: At that point I'll you know, 03:54 21 guess you'd say as having correct data, but.	04:24
22 counsel can take a look, and if you make 03:54 22 Q. Do you recall there was a correlation	04:24
22 counsel can take a look, and if you make 03:54 22 Q. Do you recall there was a correlation 23 MR. OSTOJIC: You know let me make a 03:54 23 report that you used in this case? And when I say	
22 counsel can take a look, and if you make 03:54 22 Q. Do you recall there was a correlation 23 MR. OSTOJIC: You know let me make a 03:54 23 report that you used in this case? And when I say 24 suggestion. Let's break now for just a few minutes. 03:54 24 "this case," I'm referring to Black & Decker?	04:24
22 counsel can take a look, and if you make 03:54 22 Q. Do you recall there was a correlation 23 MR. OSTOJIC: You know let me make a 03:54 23 report that you used in this case? And when I say	04:24

1			
2	preparing one, there may have been one from that 04:24	į.	inferences and correlations, and it's not as good as 04:26
	was provided as exhibits or whatever they 04:24	ŧ	having the actual device that's at issue. 04:26
	appendices or something. 04:24	3	
4	\$ 1.1. k. 1.1. 1.1. 1.1. 1.1. 1.1. 1.1.		the Black & Decker case? 04:27
	Page 143? 04:24	5	• • • • • • • • • • • • • • • • • • • •
6		6	. , , , , , , , , , , , , , , , , , , ,
7	. J.		to you with your testimony in the Black & Decker 04:
8			case? 04:27
9	1 1	9	A. I think I'm I'm I've got more data 04:27
10	ultrasonic waves are emitted from that speaker?" 04:25	10	than I did then, more time has passed; and, as I 04:27
11	Answer, "I would not." 04:25	11	said, the core of what I said then, I don't disagree 04:27
12	Question, "You wouldn't know, for 04:25	12	with. I could add to it. I would I did. I add 04:27
13	instance, if the speaker is shaped differently it 04:25	13	to it today. 04:27
14	might create a larger area that's touched by 04:25	14	Q. But you didn't in that case; right? 04:27
15	ultrasonic waves?"	15	MR. OSTOЛС: Object to form, foundation. 04:2
16	Question [sic], "I would not know." 04:25	16	I don't know if you can the 04:27
17	Question, "Or, consequently, a 04:25	17	deposition speaks for itself. 04:27
18	smaller area that's actually affected by the 04:25	18	But go ahead. 04:27
19	ultrasonic waves?" 04:25	19	BY THE WITNESS: 04:27
20	Answer, "That would be pure 04:25	20	A. I only can read what you read, and I did 04:27
21	speculation." 04:25	21	not add in you know, the speaker shape that they 04:2
22	-	•	were talking is being talked about here, I didn't 04:27
23	skip – you're welcome to read, but in terms of line 04:25	•	test that; but it makes sense to me that it might 04:27
	numeration, I'm going to skip to Line 14 here. 04:25	1	affect, and that's why I used the word speculate. 04:27
25		25	and the half I also he word spectation (1.2)
	Page 218		Page 22
1	whether the shape of a given device or a difference 04:25	1	BY MR. KOPEL: 04:27
	in the manufacturing process would affect the actual 04:25	2	
			Q. Okay. But you also said here that "As 04:27
	efficacy of that device in repelling the pest as 04:25		long as an unknown model would prove that the 04:28
	represented to consumers"; would you? 04:25		frequency peak is the same as the reference, I would 04:28
5	And then there's some discussion by 04:25		
			expect the results in a biological test to be not 04:28
	the attorneys. 04:25	6	significantly different." 04:28
7	Answer, "I'm going to tell you 04:25	6 7	significantly different." 04:28  Do you see that? 04:28
7 8	Answer, "I'm going to tell you 04:25 I'll give you my answer; and if it doesn't meet your 04:25	6	significantly different." 04:28  Do you see that? 04:28  A. I said that. 04:28
7 8 9	Answer, "I'm going to tell you 04:25  I'll give you my answer; and if it doesn't meet your 04:25  needs, you've got to reask it. The variable that's 04:25	6 7	significantly different." 04:28  Do you see that? 04:28
7 8 9	Answer, "I'm going to tell you 04:25 I'll give you my answer; and if it doesn't meet your 04:25	6 7 8 9	significantly different." 04:28  Do you see that? 04:28  A. I said that. 04:28
7 8 9 10	Answer, "I'm going to tell you 04:25  I'll give you my answer; and if it doesn't meet your 04:25  needs, you've got to reask it. The variable that's 04:25	6 7 8 9	significantly different." 04:28  Do you see that? 04:28  A. I said that, 04:28  MR. OSTOJIC: Objection. Asked and answered. 04:28
7 8 9 10	Answer, "I'm going to tell you 04:25  I'll give you my answer; and if it doesn't meet your 04:25  needs, you've got to reask it. The variable that's 04:25  of important here is the frequency output or the 04:25	6 7 8 9 10	significantly different." 04:28 Do you see that? 04:28 A. I said that. 04:28 MR. OSTOJIC: Objection. Asked and answered. 04:28 BY MR. KOPEL: 04:28
7 8 9 10 11	Answer, "I'm going to tell you 04:25  I'll give you my answer; and if it doesn't meet your 04:25  needs, you've got to reask it. The variable that's 04:25  of important here is the frequency output or the 04:25  frequency peak. That is that is what has been 04:26	6 7 8 9 10 11	significantly different."  Do you see that?  O4:28  A. I said that.  O4:28  MR. OSTOJIC: Objection. Asked and answered. 04:28  BY MR. KOPEL:  O4:28  O4:28  O4:28
7 8 9 10 11 12	Answer, "I'm going to tell you - 04:25  I'll give you my answer; and if it doesn't meet your 04:25  needs, you've got to reask it. The variable that's 04:25  of important here is the frequency output or the 04:25  frequency peak. That is that is what has been 04:26  measured and correlated. And so long as an unknown 04:26	6 7 8 9 10 11 12	Significantly different."   04:28
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7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Answer, "I'm going to tell you - 04:25  I'll give you my answer; and if it doesn't meet your 04:25 needs, you've got to reask it. The variable that's 04:25 of important here is the frequency output or the 04:25 frequency peak. That is that is what has been 04:26 measured and correlated. And so long as an unknown 04:26 model would prove that the frequency peak is the same 04:26 as the reference, I would expect the results in a 04:26 biological test to be not significantly different." 04:26 Was that your testimony? 04:26  A. Yes. 04:26 Q. Do you still agree with that? 04:26 A. I I would say the same thing. 04:26 Speculation. I've never tested these things. You 04:26 know I'm not an expert in physics, so I today would 04:26 say it's common sense or at least it could be 04:26	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	significantly different."  Do you see that?  O4:28  A. I said that.  O4:28  MR. OSTOJIC: Objection. Asked and answered. 04:28  BY MR. KOPEL:  Q. Okay. And do you agree with that still? 04:28  A. I did say that.  Q. Do you agree with that still? 04:28  MR. OSTOJIC: Objection. Asked and answered. 04:28  MR. OSTOJIC: Objection. Asked and answered. 04:28  But go ahead.  O4:28  BY THE WITNESS:  A. I could say that after a year or whatever 04:28  Tm smarter now than I was before, and while the 04:28  basis basics are the same, I think I would I 04:28  would have to qualify it today.  O4:28  BY MR. KOPEL:  Q. Can you please take a look at Page 148, 04:28
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Answer, "I'm going to tell you 04:25  I'll give you my answer; and if it doesn't meet your 04:25 needs, you've got to reask it. The variable that's 04:25 of important here is the frequency output or the 04:25 frequency peak. That is that is what has been 04:26 measured and correlated. And so long as an unknown 04:26 model would prove that the frequency peak is the same 04:26 as the reference, I would expect the results in a 04:26 biological test to be not significantly different." 04:26  Was that your testimony? 04:26  A. Yes. 04:26  Q. Do you still agree with that? 04:26  A. I I would say the same thing. 04:26  Speculation. I've never tested these things. You 04:26 know I'm not an expert in physics, so I today would 04:26 say it's common sense or at least it could be 04:26 it might be different. You just don't know. 04:26	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	significantly different."  Do you see that?  O4:28  A. I said that.  O4:28  MR. OSTOJIC: Objection. Asked and answered. 04:28  BY MR. KOPEL:  O4:28  Q. Okay. And do you agree with that still? 04:28  A. I did say that.  O4:28  MR. OSTOJIC: Objection. Asked and answered. 04:28  MR. OSTOJIC: Objection. Asked and answered. 04:28  But go ahead.  O4:28  BY THE WITNESS:  A. I could say that after a year or whatever 04:28  I'm smarter now than I was before, and while the 04:28  basis basics are the same, I think I would I 04:28  would have to qualify it today.  O4:28  BY MR. KOPEL:  O4:28  Can you please take a look at Page 148, 04:28  beginning on Line 7.  O4:28
7 8 9 10 11 12 13 14 15 16 17 18 20 21 22 23 24	Answer, "I'm going to tell you - 04:25  I'll give you my answer; and if it doesn't meet your 04:25 needs, you've got to reask it. The variable that's 04:25 of important here is the frequency output or the 04:25 frequency peak. That is that is what has been 04:26 measured and correlated. And so long as an unknown 04:26 model would prove that the frequency peak is the same 04:26 as the reference, I would expect the results in a 04:26 biological test to be not significantly different." 04:26 Was that your testimony? 04:26  A. Yes. 04:26 Q. Do you still agree with that? 04:26 A. I I would say the same thing. 04:26 Speculation. I've never tested these things. You 04:26 know I'm not an expert in physics, so I today would 04:26 say it's common sense or at least it could be 04:26	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	significantly different."  Do you see that?  O4:28  A. I said that.  O4:28  MR. OSTOJIC: Objection. Asked and answered. 04:28  BY MR. KOPEL:  Q. Okay. And do you agree with that still? 04:28  A. I did say that.  Q. Do you agree with that still? 04:28  MR. OSTOJIC: Objection. Asked and answered. 04:28  MR. OSTOJIC: Objection. Asked and answered. 04:28  But go ahead.  O4:28  BY THE WITNESS:  A. I could say that after a year or whatever 04:28  I'm smarter now than I was before, and while the 04:28  basis basics are the same, I think I would I 04:28  would have to qualify it today.  O4:28  BY MR. KOPEL:  Q. Can you please take a look at Page 148, 04:28

THE THE THE TANK WINDOW AND A SECOND	, , , , , , , , , , , , , , , , , , ,
1 Q. Page 148 beginning on Line 7. 04:28	1 most impact on the results. 04:30
2 A. Okay. I have it. 04:28	2 There could be a list of others that 04:31
3 Q. Question, "So you don't know whether they 04:2:	3 affect it, maybe not any one significantly in and of 04:31
4 would actually be effective in repelling a given pest 04:29	4 itself; but you put them all together, and they might 04:33
5 or insect based on this change in shape or size; 04:29	5 have they might make a difference. 04:31
6 isn't that true?" 04:29	6 Q. Did you do that in the Black & Decker 04:31
7 Answer, "I did not do the testing; 04:29	7 case? 04:31
8 but, again, I go back to the variable at interest. 04:29	8 A. No, I did not. 04:31
9 Is the frequency peak matched to the working 04:29	9 Q. Why not? 04:31
10 frequency output. So if those are similar, in my 04:29	10 A. It wasn't part of the responsibility that 04:31
11 opinion, the efficacy results would be the same." 04:29	11 was given to me. 04:31
12 Do you see that? 04:29	12 Q. Do you think you should have? 04:31
13 A. I do. 04:29	13 A. No, they I'm not a physics expert. I 04:31
14 Q. Was that your testimony? 04:29	14 wouldn't know how to I wouldn't I don't have 04:31
· · · · · · · · · · · · · · · · · · ·	
•	15 the testing equipment. I don't think they would want 04:3
16 Yes. 04:29	16 me to. 04:31
17 Q. Do you still agree with that? 04:29	Q. Okay. And in the Black & Decker case did 04:3
18 A. As it says in my report, the art the 04:29	18 you make determinations on the efficacy of certain 04:3
19 variables of most interest, in my opinion, are the 04:29	19 devices based on testing performed on other devices? 04
20 frequency and the decibels. 04:29	A. I may have. You'd have to point me to it 04:31
There could be other things that 04:29	21 or else I'll read the whole thing. 04:31
22 affect the efficacy of the product. 04:29	Q. Well, please take a look at your expert 04:32
23 Q. So 04:29	23 report in that case. 04:32
A. I don't think that those other things 04:29	24 A. In that case? 04:32
25 supersede the importance of these two. 04:29	25 Q. Sure. 04:32
Page 222	Page 224
1 Q. And here when you were asked about 04:29	1 A. What number? 04:32
2 speaker shape and size, your answer is that as long 04:30	2 Q. You got it? 04:32
3 as the frequency peak matched to the working 04:30	3 A. No, I've got No. 2, Exhibit 2? No. 04:32
4 frequency output, the results would be the same. 04:30	4 Q. It's Exhibit 7. 04:32
5 Do you see that? 04:30	5 A. I'm not seeing it. 04:32
6 A. Yes. 04:30	6 Q. The document starts with Exhibit 1. 04:32
7 Q. Okay. And, specifically that, do you 04:30	7 A. Oh. Got it. Got it. 04:32
8 still hold that opinion? 04:30	8 Q. Okay. Please take a look at Page 9. 04:32
9 MR. OSTOЛС: Objection, Asked and answered, 04:30	9 There's an Opinion section, and I'll direct you to 04:33
10 Two times. 04:30	10 your Opinions 1 and 2, which also cross-reference 04:3
11 BY THE WITNESS: 04:30	11 your Findings 4 and 7. 04:33
12 A. Yes, 04:30	12 A. Yes. I mean I know there wasn't a 04:33
13 BY MR. KOPEL: 04:30	13 question, but I've read 1 and 2. 04:33
	•
MR. OSTOJIC: Objection. Asked and answered. 04:30	16 you based a finding of efficacy for an ultrasonic 04:33
17 BY THE WITNESS: 04:30	17 pest repeller based on testing conducted on a 04:33
18 A, Go on. 04:30	18 different ultrasonic pest repeller; correct? 04:33
19 MR. OSTOJIC: Three times. 04:30	19 MR. OSTOЛС: Object to form, foundation. 04:33
20 Go ahead. 04:30	20 The document speaks for itself. 04:33
21 BY THE WITNESS: 04:30	21 But go ahead. 04:34
A. If there's a okay. The way I would 04:30	22 BY THE WITNESS: 04:34
23 answer your question definitively is to do a multiple 04:30	23 A. The answer is yes. 04:34
24 regression test of all the variables. Frequency, 04:30	24 BY MR. KOPEL: 04:34
25 decibels are probably the top two that would have the $04:30$ Page 223	Q. Do you think that your testimony in this 04:34 Page 225

1		
	case is consistent with your testimony in that case 04:34	
2	in that in this case you've criticized Dr. Potter for 04:34	2 BY MR. KOPEL: 04:36
3	doing exactly what you did in the Black & Decker 04:34	:34 3 Q. So it seems here that there was testing 04:36
4	case? 04:34	4 done on a Weitech-branded device; correct? 04:36
5	MR. OSTOЛС: Objection. Mischaracterizes 04:34	A. It's been over a year, but that's what I 04:36
6	his testimony, actions; as well as form, foundation. 04:34	4 6 would yes. 04:36
7	But go ahead. 04:34	7 Q. And you were rendering an opinion on an 04:36
8	BY THE WITNESS: 04:34	8 Applica-branded device; correct? 04:37
9	A. Which is what? 04:34	9 A. I was rendering an opinion on 04:37
10	BY MR. KOPEL: 04:34	10 Black & Decker Applica, yes. 04:37
11	Q. Which is rely on testing of other 04:34	11 Q. Okay. So those those are different 04:37
12	ultrasonic devices in making a finding of 04:34	12 devices; right? 04:37
13	regarding efficacy of another device. 04:34	13 A. I really can't recall from a year ago 04:37
14	MR. OSTOJIC: Same objections. 04:34	14 what the details of this case were. 04:37
15	BY THE WITNESS: 04:34	15 And I cannot recall the relationship 04:37
16	A. As I recall, that case the devices 04:34	16 between Stanley Black & Decker and Applica, and I 04:37
17	that were at issue were all manufactured by Applica 04:34	:34 17 don't 04:37
18	or Black & Decker, and and I don't know what 04:33	35 18 Q. Well, you mean between Weitech and 04:37
19	your question is. 04:35	19 Black & Decker? 04:37
	BY MR. KOPEL:	20 A. Well, either one. 04:37
21	Q. Sure. Well 04:35	21 Q. How how is that how is the 04:37
22	A. I may need it again. 04:35	22 relationship relevant? 04:37
23	Q. Okay. If you look at your Finding No. 4, 04:35	A. Well, because the way you asked the 04:37
24	it appears that you've used a correlation report? 04:35	24 question. 04:37
25	A. Yes, it wasn't it was not developed by 04:35	Q. Well, what is the relevance of the 04:37
	Page 226	Page 27
1	me. 1 believe it was developed by I mean I was 04:35	1 relationship to one another? I mean did you examine 04
2	handed it was part of the documentation that was 04:35	2 whether or not the devices had the same number of 04
3	given to me. 04:35	3 speakers? 04:38
4	Q. Okay. And you've used this correlation 04:35	4 A. I looked at the product spec sheet as 04:38
5	report to determine that different models of 04:35	5 this Finding No. 4 says, and I enumerated restated 04:
6	ultrasonic pest repellers have similar electrical 04:35	6 what I saw in the product spec sheet and then 04:38
_		
7	magnitude and frequency peak. 04:35	7 testified I guess you could say that there was a 04:38
7 8	magnitude and frequency peak. 04:35  Do you see that? 04:35	
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8	Do you see that? 04:35	7 testified I guess you could say that there was a 04:38 8 correlation report that went along with it. 04:38
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8 9 10 11	Do you see that? 04:35  MR. OSTOJIC: I'm sorry object. 04:35  BY THE WITNESS: 04:35  A. No. 04:35  MR. OSTOJIC: Where you looking at? 04:35	7 testified I guess you could say that there was a 04:38 8 correlation report that went along with it. 04:38 9 Whether it was Applica that produced 04:38 10 it or Black & Decker that produced it or Weitech, I 04:38 11 cannot remember. 04:38
8 9 10	Do you see that? 04:35  MR. OSTOJIC: I'm sorry object. 04:35  BY THE WITNESS: 04:35  A. No. 04:35  MR. OSTOJIC: Where you looking at? 04:35  MR. KOPEL: Finding No. 4. 04:36	7 testified I guess you could say that there was a 04:38 8 correlation report that went along with it. 04:38 9 Whether it was Applica that produced 04:38 10 it or Black & Decker that produced it or Weitech, I 04:11 cannot remember. 04:38 12 MR. KOPEL: You can put that to the side, 04:38
9 10 11 12	Do you see that? 04:35  MR. OSTOJIC: I'm sorry object. 04:35  BY THE WITNESS: 04:35  A. No. 04:35  MR. OSTOJIC: Where you looking at? 04:35  MR. KOPEL: Finding No. 4. 04:36  THE WITNESS: Can I ask for a page number? 04:36	7 testified I guess you could say that there was a 04:38 8 correlation report that went along with it. 04:38 9 Whether it was Applica that produced 04:38 10 it or Black & Decker that produced it or Weitech, I 04:11 cannot remember. 04:38 12 MR. KOPEL: You can put that to the side, 04:38 13 please. 04:38
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